SENATE—*Monday, May 20, 1991*

(Legislative day of Thursday, April 25, 1991)

The Senate met at 2 p.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Assistant to the Chaplain, the Reverend John E. Stait, offered the following prayer:

Let us pray:

If it is possible, as much as lieth in you, live peaceably with all men.—Romans 12:18.

Eternal God, help us all by Your all pervasive Spirit to do everything we can, everything as the Scripture says "* * * possible * * * to live peaceably with all men."

As the Senators and their staffs struggle to work out legislation in the midst of differing positions, issues, and compromise, help them remain pleasant.

Even when frustrated and angry, help us to entrust ourselves to You and do our very best in the situation.

Help us with the other drivers on the road as we drive home, with our families, with our neighbors, with our Nation, and our world to be peacemakers.

In the name of Him who said:

Blessed are the peacemakers: for they shall be called the children of God.—Matthew 5:9.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 1991.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for morning business not to extend beyond the hour of 2:30 p.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Chair in his capacity as a Senator from the State of Nevada suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ST. LOUIS UNIVERSITY PUBLIC LAW REVIEW

Mr. DANFORTH. Mr. President, I rise to offer my congratulations to the St. Louis University Public Law Review on its 10th anniversary.

With the support of the faculty and dean, the Review is published by students at St. Louis University School of Law. The Review is unique among legal publications because of its consideration of crucial public law topics from a multidisciplinary perspective. By focusing each issue on a timely topic, the Review has become an authoritative source for legal and public policy analysis.

The Review should be proud of its contribution to legal scholarship.

VISIT BY EDUARD SHEVARDNADZE

Mr. KENNEDY. Mr. President, I would like to call to the attention of my colleagues an excellent article by David Nyhan, a columnist for the Boston Globe, on Eduard Shevardnadze, the former Foreign Minister of the Soviet Union and one of the greatest statesmen of our time.

Mr. Nyhan's column highlights Mr. Shevardnadze's visit to the United States and his courageous efforts to preserve the democratic reforms he helped to institute in the Soviet Union under the leadership of President Michael Gorbachev.

Mr. Shevardnadze resigned his office this past December on a matter of the very highest principle—his fear that hard liners were leading his country back to an era of dictatorship. He is in the United States in his capacity as a private citizen and president of a new democratic think tank in the Soviet Union, in order to share his concern about the future of his country and to gather international support for Gorbachev and his reforms.

Mr. Shevardnadze has bluntly warned Americans that the Soviet Union is rapidly changing into a totally new state which could be socialistic, capitalistic, or feudalistic, depending on the turn of events during the next few months. The Soviet economy is on its knees, he notes, and it is up to Western governments, through their economic and political support, to determine whether Gorbachev maintains control or is driven from power by competing political forces.

No one knows the course our two nations will take in the months and years ahead. All of us hope that President Gorbachev succeeds in his reforms and that the cold war will never return to haunt our planet. If the future brings peace and prosperity to both our countries, it will be in part because Eduard Shevardnadze never lost sight of the democratic ideals of liberty, social justice, and basic human rights for all peoples.

I ask unanimous consent that Mr. Nyhan's article may be placed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Boston Globe, May 16, 1991]

A SUPREME PITCHMAN

(By David Nyhan)

It sounds like a lot of money, said the white-haired gent with the friendly manner. One and a half billion dollars. That's a big number. But when you figure this is to buy food for 300 million people, it's not so big. It's five bucks a head is what it is.

And that may be the cost of keeping Mikhail Gorbachev in power. Says who? Says his old comrade in dis-arms Eduard Shevardnadze, who quit Gorbachev's Cabinet with a wintry blast about the reemergence of dictatorship.

It's all very confusing, but we're talking Russians here, after all. And last Friday night, at Boston's John F. Kennedy Library, Eduard Shevardnadze rehearsed the lines he'd be using on US audiences for two weeks to come.

He knows how to warm up an audience. Ted Kennedy got him off on the right foot. Seventeen years ago, Teddy found himself in the sunny Soviet province of Georgia, breaking bread and swapping poems with Shevardnadze. In 1974, no one entertained any notion that a man from southern Russia (Mikhail Gorbachev) would dismantle the Soviet empire, with Shevardnadze's help.

"He was telling me if I wanted to know about a person from Soviet Georgia, I had to

read the classic poem 'The Night in the Tiger's Skin'—in the original Georgian."

Shevardnadze opened, naturally enough, with a homily to JFK. As everyone sat transfixed, aware that Jacqueline Kennedy Onassis sat demurely at the head table, he said: "When he was assassinated, we talked a lot about class warfare, the victory of socialism, how Khrushchev said, 'We will bury you,' and how we would all 'be present at the funeral of capitalism.' Our official line was that the president of the US was head of an imperialist movement."

He paused. "But when we heard about this, the whole country was in tears. Including myself. He was a great person. And great people never die. In the memory of their people, they live forever."

There were 300-plus people in the room. And at that moment, the Soviet had them. With supreme (not necessarily Soviet) skill, he segued. He needled Teddy, "whom I love and respect." It was that brash young American who in 1974 "told me: 'You're going to be the minister of foreign affairs of your country'."

He told some stories about President Reagan. At their first meeting, Reagan produced a series of his famous index cards, bearing quotations from Marx, Engels, Lenin.

"You can imagine what kind of quotations they were," he deadpanned. "He is an inexhaustible source of all manner of anecdotes. He could not foresee how we could have a democratic society in the Soviet Union. . . . And now I see how hard it is."

His mood grew somber. "Life is difficult for us now. I'm not saying we are starving. But we're getting close to that. We have not got much time left. In the next several months, we have to cope with some problems, get enough food for our people."

The Soviet economy is on its knees. It is up to the Western governments to say whether Gorbachev stays or goes. The embattled Soviet chief can't find time to get to Stockholm to pick up his now dented and dusty Nobel Prize for Peace.

So Shevardnadze, who is now out of the government, came to the US, to sit with his friend Jim Baker, to puck up an honorary degree from Boston University, to schmooze with his old friend Ted Kennedy, and to lobby Americans for the $1.5 billion in loans President Bush is holding up.

Once the most exciting politician-statesman-high-wire-walkers in the world, Gorbachev is battered at home and bruised abroad. Some think, slyly, that Shevardnadze is positioning himself to pick up the pieces, once Gorby and Boris Yeltsin collide for the last time. He tells Americans bluntly that the Soviet Union is changing dizzily into a "totally new state—socialistic, capitalistic, feudalistic, I don't know what it's going to be."

Or, if the right-wingers get their way, and the military stages a coup, sending tanks to the Kremlin in the early hours, commandeering the airways, and shooting down mobs of protesting students or miners or crypto-capitalists, he might wind up over here, a perennial guest on "MacNeil/Lehrer," doomed to be Ted's mop-up man on "Nightline"; "When we come back, we'll hear from Eduard Shevardnadze, who was Soviet foreign minister during the brief thaw that ended in 1991."

For the present, Gorbachev grimly rides the tiger across the bear's back, as Shevardnadze plots to avoid ending up inside the tiger's belly.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,256th day that Terry Anderson has been held captive in Lebanon.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Chair announces that morning business is now closed.

SENATE ELECTION ETHICS ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to amend the Federal Elections Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns.

The Senate resumed consideration of the bill.

Pending:

(1) Boren amendment No. 242, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

AMENDMENT NO. 246

(Purpose: To amend the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 to apply the same honoraria provisions to Senators and officers and employees of the Senate as apply to Members of the House of Representatives and other officers and employees of the Government, and for other purposes.)

Mr. DODD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 246.

Mr. DODD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendent is as follows:

At the end of the amendment, add the following new section:

SEC. . UNIFORM HONORARIA AND INCOME LIMITATIONS FOR CONGRESS.

(a) ADMINISTRATION OF RULES AND REGULATIONS.—Section 503 of the Ethics in Government Act of 1978 is amended by—

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(2) inserting after paragraph (1) the following new paragraph:

"(2) and administered by the committee of the Senate assigned responsibility for administering the reporting requirements of title I with respect to Members, officers, and employees of the Senate;".

(b) DEFINITIONS.—Section 505 of the Ethics in Government Act of 1978 is amended—

(1) in paragraph (1) by inserting "a Senator or" after "means"; and

(2) in paragraph (2) by striking "(A)" and all that follows through "(B)".

(c) AMENDMENTS TO THE ETHICS REFORM ACT OF 1989.—Section 1101(b) of the Ethics Reform Act of 1989 is repealed and section 1101(c) is redesignated as section 1101(b).

(d) FEDERAL ELECTION CAMPAIGN ACT OF 1971.—Section 323 of FECA (2 U.S.C. 441i) is repealed.

(e) SUPPLEMENTAL APPROPRIATIONS ACT, 1983.—Section 908 of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1) is repealed.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992.

Mr. DODD. Mr. President, I will not take a great deal of time this afternoon. This amendment is not a new amendment. It is an amendment that was offered a year ago and adopted by this body by a vote of 77 to 23. It was, in fact, last year attached to the campaign finance reform legislation. The fate of the larger bill last year terminated the amendment, obviously, and I hope this year we will end up with campaign finance reform legislation, as I know all of my colleagues do. So with that hope in mind, I have reoffered this amendment and attached it to this legislation.

Very briefly, Mr. President, this amendment is designed to ban honoraria and to limit a Senator's outside earned income. As I mentioned a moment ago, it is identical, except for the effective date, to the amendment I offered last August. Mr. President, I have no illusions. This is not a terribly popular amendment to be offering because it affects directly the income of many of my colleagues who are struggling to make ends meet. So I realize this is a proposition that does not endear one to one's fellow colleagues. Someone suggested facetiously that I might want a food taster over the next several days as a result of offering this amendment.

Let me describe what it does and does not do because there were some questions raised a year or so ago about the language in this amendment today and what is intended. First of all, I think all of us recognize the time has come to rid this institution of the perception—and I emphasize "perception" because I believe that is what it is—that the men and women who serve in this body have a price tag on them. We are the only body left, the only place left in this city that allows people to continue to collect honoraria. It is a unique distinction that the Senate of the United States should be in that position.

Clearly, in this case, the perception, of course, does not mirror the reality, as I said a moment ago. To our employer, the American public, this perception is manifested by a clear lack of confidence and support for this great body. In the face of this vote of no confidence, this institution, in my view, cannot continue to function effec-

tively. We, as Members of Congress, have a solemn obligation to serve this institution and encourage others to serve it. It is my hope, Mr. President, this amendment will help to begin that process.

This amendment is very straightforward. It would conform the Senate rules on honoraria and outside income to those approved by the House of Representatives in the Ethics Reform Act of 1989. There will be one exception, Mr. President, that I will offer momentarily. But, basically, it is the same proposition as included in that legislation. As such, Mr. President, first, the amendment would conform the Senate rules on honoraria and outside income to those that apply to the House of Representatives as well as to the executive and judicial branches of Government.

Second, it would prohibit the acceptance of honoraria by Senators beginning January 2, 1992, and would, at the same time, limit outside earned income to 15 percent of the Senator's salary.

Third, it would prohibit honoraria to be paid on behalf of a Senator, officer, or employee directly to a charitable organization if such payments exceed $2,000 or are made to a charitable organization from which the individual Senator or immediate family member derives some benefit.

Fourth, Mr. President, it would prohibit Senators from affiliating or being employed by a firm, partnership, association, corporation, or other entity to provide professional services which involve a fiduciary relationship for compensation. The second part of that would also prohibit Senators from permitting his or her name to be used by any such firm, partnership, association, corporation, or other entity and prohibit a Senator from practicing a profession which involves a fiduciary relationship for compensation.

It would prohibit them from serving for compensation as an officer or member of an association, corporation, or other entity or receiving compensation for teaching without the prior notification and approval of the Senate Ethics Committee.

Mr. President, I want to make this next point perfectly clear because it has raised some controversy in the past. This amendment does not, and I repeat does not, prohibit a Senator from limiting his or her income from copyright royalties from established trade publishers that are consistent with usual and customary contract terms. In fact, Mr. President, this amendment tracks the language in the recently revised rule 47 of the House of Representatives.

New paragraph (e), which defines the exclusions to outside income, indicates that "copyright royalties received from established publishers, pursuant to usual and customary contractual terms, are not honoraria and are exempt"—I repeat are exempt—"from the rules governing outside earned income."

For those in the past who have raised concerns that this amendment or this proposition would limit them from engaging in bona fide literary efforts, those concerns, I hope, have been dispelled once and for all. This legislation does not do that. I want to make it clear that the author of the legislation is totally opposed to that, and certainly it is not the intent of this amendment to allow that.

Further, Mr. President, the report of the bipartisan task force on ethics, which developed the proposals from the 1989 Ethics Act, explained that the new language on the limitations of outside income is meant to, among other things, clarify and settle the fact that copyright royalties are exempt from our definition of outside income. So I hope, Mr. President, we have put an end to that debate once and for all. Therefore, our efforts to track the House language highlight the fact that it has not been, nor is it now, nor will it be the intent to include copyright royalties under the definition of either honoraria or earned outside income.

It is, however, our intent to ensure that Senators do not spend an inordinate amount of time looking for outside sources of income. Hence, we have included a 15-percent cap on any outside income. It is my sincere belief that such a cap would limit unforeseen new sources of outside earnings not addressed by the honoraria ban and other restrictions on outside earnings provided for in this amendment.

Mr. President, I would also like to state clearly for the record that it is not the intent of this amendment to affect the amount of unearned income that a Senator may accept. Now, that also has provoked some controversy.

Mr. President, I, of course, appreciate those who would like to include unearned income under the 15-percent cap, but I think, realistically, we understand and accept that that is not constitutionally feasible. For those who come to this body, who have an unearned income that they are collecting, no matter how envious some may be of having a similar source of income, the fact is as a practical matter you cannot do that under the Constitution.

So while I expect there may be some amendments that will be offered to do just that, I suggest they are being offered in pique. Despite the intent to try to put everyone on exactly the same footing, the realities indicate or dictate that that would not be a wise step for us to make, no matter how tempting it may be. In my view, it would be inappropriate and unprecedented in American history but would also be a grave error that might produce the unintended effect of precluding from service many dedicated and exceptionally talented persons who would otherwise lend those talents to this institution.

There are some who suggest there may be another vehicle that I could have used for this proposition. I think the issues of campaign finance reform and honoraria are inseparably linked. It is the outrageous financial cost of these campaigns and the source of these moneys that have led us to the need of campaign finance reform. It seems to me that honoraria fits into that niche. It is exactly what we are talking about. Who pays the U.S. Senate? Where do Senators collect these honoraria? What is the impact on the decisionmaking process as the Senate conducts business?

Mr. President, 32 Senators have adopted a policy of not accepting honoraria for personal use and many more are no longer accepting honoraria since last year's vote in this body. I am pleased to have been joined in my efforts by 18 of our colleagues from both sides of the aisle who have sponsored this ban on honoraria.

Finally, Mr. President, the amendment that I offer today does not include any corresponding provisions related to a pay raise. The questions before us are, who pays the Senate and should a substantial portion of our salaries as Senators come from speaking fees or should it come wholely from the Federal Treasury of the American public?

The answer, it seems to me, is obvious. As public servants, our salaries should come from the public alone. The amendment is straightforward and, as I mentioned, it passed this body by a vote of 77 to 23 last August. As such, I hope we will not engage in a protracted debate.

I do not believe that will be the case. Everyone knows what the issues are. It is not a new subject matter for this body. We have been over this again and again in the past number of years. The task ahead of us is a difficult one but one that we must undertake if we are to preserve the integrity of this institution. Let us now follow the lead of the House of Representatives, the executive branch, and the judicial branch of Government. In fact, every other quarter has prohibitions in this area except the Senate. We are the only place remaining where this kind of practice is allowed and tolerated. Let us begin the process to outlaw honoraria by adopting this amendment.

Mr. President, I will have a modification I would like to offer in a few moments, but in the meantime I recognize there are other colleagues on the floor so I will yield the floor at this point.

Mr. BYRD. Mr. President, I am pleased to join our colleague the distinguished senior Senator from Connecticut in cosponsoring this amendment to ban the receipt of honoraria by

Senators, as well as by Senate staff and Senate officers.

The U.S. Senate is the only institution in our Federal Government that still permits the acceptance of honoraria for personal use.

The practice is not illegal for Senators as long as the honoraria is reported.

But what is legal is not necessarily right or wise or in the best interest of the country.

To the U.S. public, the acceptance of honoraria by U.S. Senators—alone of all Federal officials—looks like the acceptance of fees to look out for special interests—fees to vote for this bill or that.

Current honoraria restrictions limit Senators to $2,000 per appearance, but there is no statutory limit on the number of appearances a Senator can make before any one group. So, under the statute, a Senator could actually collect several $2,000 fees from the same organization.

Even if a Senator never votes for, or inclines toward, legislation favored by the payers of honoraria, and even if a Senator never assists a special interest group that has paid him honoraria, the damage has been done in the eyes of the electorate—that Senator has been tainted by the acceptance of gratuities by a group that has an interest in legislation or dealings with the Federal Government.

The Senate honoraria system is widely perceived as being one of the most serious ethics problems in Washington today. In recent years, hundreds of newspapers across America have railed against this payola scam for Senators, calling honoraria "bag money," "a disgrace," "a low-life practice," and "special-interest payoffs."

Again and again, opinion polls give politicians low ratings on trust and honesty. In part, the undercurrent toward term limitations reflects a widespread perception that elected officials are untrustworthy, corruptible, and purchasable.

That disreputation includes U.S. Senators.

This legislation to end honoraria here in the Senate is a genuine opportunity to restore part of the electorate's confidence in the Senate as an institution. Around the world, nations emerging from dictatorships and from corrupt governments are looking at our form of government as a model for their own self-government. In this legislation, we can provide an impressive example of the integrity of the Senate to the electorate, and an example of the superiority of representative democracy to the world at large.

More importantly, by voting for this legislation to end honoraria acceptance here in the Senate, we can strike a new blow for our own self-respect and demonstrate to our severest critics that the U.S. Senate has the intestinal fortitude to reform its own house and shore up its reputation as the greatest deliberative body in the world.

Mr. President, this is the year for the Senate to ban honoraria. We can begin to restore the public trust with this important step and we have no excuse for further delay.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent to address the Senate as in morning business.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized as in morning business.

PROPOSALS TO REVITALIZE U.S. POLICY IN ASIA

Mr. SIMON. Mr. President, there is understandable interest in and attention to the most-favored-nation status of the People's Republic of China, and I will address that at a future session of the Senate. But there are broader issues in that region that should concern us, that deserve our attention, and I will take this opportunity to discuss those.

Recently, I had a chance to visit Taiwan, officially known as the Republic of China, and Hong Kong. I would like to share with my Senate colleagues a few observations, as well as my concerns, about that area of the world.

On Taiwan, there has been remarkable economic and political progress. I met with President Lee Teng-Hui, who is a native of Taiwan, the first native Taiwanese to serve as President. I came away with the impression that Taiwan has a solid leader who has shown a remarkable ability to pull the nation together as he moves ahead in civil liberties as well as economic progress. People who once were political prisoners are now leaders of an opposition political party. There is universal recognition for the civil liberties progress that has been made. The majority party was reestablished in Taiwan by Generalissimo Chiang Kai-Shek in 1949, and later headed by his son, Chiang Ching-Kuo. Their political party, the KMT, continues to be the dominant political force on the island, but a vigorous opposition now exists.

The average income in Taiwan is $8,000 a year compared to approximately $300 in the People's Republic of China [PRC]. Taiwan has the world's largest surplus of foreign currency reserves and is the 13th largest trading country in the world. What is also impressive is that there has developed a healthy middle-class and fewer of the huge disparities between rich and poor that many nations have. The difference between the wealthiest 20 percent and the poorest 20 percent on Taiwan is a 4-to-1 ratio. By comparison, in the United States our ratio is 9 to 1. We could learn from our friends in Taiwan. But there are significant economic needs: More long-term investment, improved communications, improved transportation, and other things that you would expect a nation to need that has shown dramatic progress economically.

United States policy toward Taiwan has been inconsistent with our ideals. It has been dictated by an excessive desire to please the government of the mainland. I want to get along with the PRC, but we will not earn respect by not standing up for our ideals. Successive administrations in the United States since President Carter have tried to maintain a balance between our official relations with Beijing and unofficial ties to Taipei. Those unofficial relations with Taiwan have been significant; perhaps most important, we are the only major industrial nation willing to sell Taiwan the weapons that Taiwan needs for self-defense and deterrence. But even in that area, our support has been declining, and our other relations with Taiwan have been cool and distant.

Now the time has come to tilt that balance more toward Taiwan, in recognition of their impressive democratization and in sad acknowledgment of the backward steps taken by the repressive regime in Beijing. Two ways to do that are:

First, increasing the officiality of our relationship by allowing contact between our Cabinet-level officials; and

Second, supporting Taiwan's admittance to international organizations in the technical and economic/financial areas.

Our traditions are for individual civil liberties and self-rule by the people. If we do not stand solidly for freedom and democracy, we do not stand for anything.

While Italy, France, Ireland, and other countries send cabinet-level officials to Taiwan, we are too timid to do so. Our present weak-kneed policy grew out of a mistake that was made in going from one extreme in China policy to another. We recognized the Republic of China—Taiwan—as the Government of all of China for many years. It was an illusion that did not do any good for the people of China nor for the people of the United States.

Then instead of doing what the United States did in Germany—officially recognizing that there were two Governments, East Germany and West Germany—we shifted to pretending that the government of the mainland, the People's Republic of China, represented all the people. We ignored the fact that the Republic of China—Taiwan—spoke for the 20 million people on Taiwan. Recognizing two Germanies was not a barrier to ultimate reunification of Germany, and a recognition of two Chinas would not have been a barrier to the ultimate unity of China.

But that is now history. To shift now to a two-China policy would be disruptive and unrealistic.

But it is also unrealistic not to acknowledge that there is a different Government in Taiwan. And that Government is infinitely closer to us in what it practices in freedom and democracy than is the Government of the PRC. There are many things we can do that are short of official recognition of the Government of Taiwan. The United States is now quietly supporting the admission of Taiwan to GATT. There are other international organizations where the PRC would not have a United Nations veto, and Taiwan could at least be admitted as an observer. Asia Pacific Economic Cooperation [APEC] is an important new mechanism for trade and economic development in the Pacific region. Taiwan would be a natural for membership. The World Health Organization is another example, the Food and Agricultural Organization yet another. There are ways of making clear that we regard Taiwan as a responsible member of the community of nations. The Wall Street Journal recently published an editorial suggesting that President Bush invite President Lee to the United States. I am all for that. But President Bush probably feels it would be too awkward to invite President Lee over or to visit Taiwan. If even having the Secretary of State visit Taiwan is somehow beyond the courage of our government, at the very least send the Secretary of Commerce to meet with officials in Taiwan, one of the world's great trading nations; or send the head of the Environmental Protection Agency, William K. Reilly, to discuss substantial environmental problems that Taiwan has that ultimately affect the United States and the mainland, as well as the people of Taiwan. Our present policy of almost pretending Taiwan does not exist is anemic and could even lead to violence. I am concerned that our official posture of recognizing Taiwan as part of China puts us on very thin ice if the PRC ever decides they want to take over Taiwan through violent means. I am confident that a majority of the Members of Congress would want the United States and the United Nations to respond quickly to any such aggression, but our present policy leaves that situation somewhat ambiguous.

The thriving British colony of Hong Kong has achieved remarkable economic success. I was in Hong Kong only one other time, as a young journalist back in 1959, and the changes that have occurred in Hong Kong are dramatic, almost unbelievable. Hong Kong has the highest per-capita average income of any place in that area of the world outside of Japan. The per-capita income average is $12,000 a year. Prosperity in Hong Kong has spread over the border to the southern province of China. It does not mean that the people of the southern province of China have the same standard of living or the same basic liberties that the people of Hong Kong have, but Hong Kong's wealth has spilled over, and the People's Republic of China receives some of the benefit from Hong Kong's prosperity.

As part of my visit to Hong Kong, I visited some of the boat people who have fled Vietnam. There are approximately 45,000 Vietnamese who are being detained in a prison-like situation in Hong Kong, where they have adequate food and medical attention, but they live in extremely cramped quarters that cause serious social problems. The United States and other countries could resolve the immediate circumstances of the 45,000 people, but unless we move on the problem that is causing people to leave Vietnam, we will not ultimately resolve anything. Achieving that goal will require an improvement in the economy of Vietnam and improvement in human rights there. That means that the United States should deal much more realistically with the Government of Vietnam, including stopping the trade boycott and recognizing the Government there, and we should push, at the same time, for Vietnam to improve its record in human rights and to fully address United States questions about those missing in action during the war. Unless there is movement on the economic front and on the human rights front, there will continue to be large numbers of people who will try to leave Vietnam. This is essential for resolving the problem of those detained in Hong Kong.

While I was in the camp I met a woman, whose background I am still checking on, who when I asked her if she would return to Vietnam replied, "No. The Communists there killed my father, and if I return they will kill me." And then she started to cry. Her fears may be unwarranted, but they are real. Until there is a change in the human rights posture of the Government of Vietnam, there will continue to be a great many people who fear returning to Vietnam.

When I visited the refugee camp at Whitehead, I met a British writer, Heather Stroud. Ms. Stroud gave me the background on some of the people I did meet: Nguyen Van Hoa, Nguyen Van Son, Vu Dahn Phi and his family. Their stories are gripping, and I ask unanimous consent to insert their stories into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACCOUNT 1

Nguyen Van Hoa-23011, Sec 1, Whitehead Detention Centre. Pham Thi Thanh Hai-23012 (wife); Nguyen Minh Kong-23913 (son); VRD 252/88

When the war broke out between China and Vietnam it caused many problems for my family. My sister was married to an ethnic Chinese. Vietnam had established a policy whereby all ethnic Chinese had to abandon their homes and leave Vietnam. Those who did not leave were rounded up and placed in special economic zones/compounds. My brother-in-law and sister decided not to leave Vietnam. My sister would not have been safe in China, yet it was not safe for her husband to remain.

My sister and brother-in-law were arrested and taken to Tran Duong-Vinh Bao, which is about forty kilometers from Haiphong City. Life was very difficult. They had to work hard and received little food. They could not leave the compound to visit with their family. My sister and brother-in-law found the situation to be so difficult that they escaped and crossed over the border into China.

The police called my family to the 48 office (counter espionage office). They said that my family had planned my sister and brother-in-law's escape. They believed that because my family lived in Vietnam and my sister and brother-in-law lived in China with his family, we were all part of a secret organization whose intent was to plot against the Vietnamese government. They said that if we did not admit to our crime we would be replaced in the confining zone to replace my sister and brother-in-law.

December, 1979 they read the order which required us to leave our house and move to the confining zone. I protested at the injustice of their actions. They took me to the police station to sign the arresting form. While I was waiting in a room I decided to attempt to escape. I knew that if I did not try then, I may never get another opportunity.

I escaped from the police station and made my way to my friend's house. We then sent word through my friend that I needed a place to hide. After three days I left and went to stay at my friend's mother's home in HaBac.

My family were now totally scattered. Our house had been seized by the authorities. My sister's family had fled to China. My mother had been arrested and was living in the confining zone. My younger brother who had been in the army was exiled and sent to 71 Thuy Nguyen for hard labour. I was in hiding. We had committed no crime and yet we were being punished because the authorities believed we had, or were likely to, betray them. It would have been more accurate to say, our country had betrayed us. It was because of these circumstances that I decided to leave Vietnam.

In March 1980, I set out for Hong Kong believing that if I survived the sea voyage I would find freedom. During our sea voyage our boat broke up. We had to struggle to reach the shore. We had left the Vietnamese territorial waters and found ourselves in China. We were arrested by the Chinese police and taken to Dong Xing camp.

Dong Xing was run on the lines of a prison, rather than, a refugee camp, even though there were children among us. We were treated as though we were criminals. If we attempted to escape, we could be shot or torn apart by the guard dogs. We were always hungry, especially the men because we tried to make sure that the children received enough to eat. If anyone was hurt or became ill we received very little medical care. Many people died because they did not receive adequate medical attention. Anyone who transgressed the rules could be tortured.

One man climbed over the wall in an attempt to escape. The guards saw him and shot him. He was badly hurt and they took him away. The next day we protested against this event and asked to be allowed to continue our journey to Hong Kong. Our request was refused and we were forced back to the camp by the police. Five men, suspected of being leaders of the demonstration were tor-

tured and taken away. Later some of them returned.

In 1982 myself and four other men, (Nguyen Chi Cing, Nguyen Van Dai, Nguyen Van Hiep and Nguyen Son Hong) decided to escape from Dong Xing and to attempt to get to Hong Kong.

We managed to get out of the camp without being apprehended. We had no map and were uncertain of our route. In the dark we ventured into the border area. The next morning all of us were arrested by the border troops of Vietnam. They automatically assumed that we were on a spying mission from China. They tortured us by hitting us with the butt of their guns. All the time they tried to get us to confess that we were spies. They wanted to know what our mission was. After some time they were dissatisfied with our claims of innocence. They pushed our faces into the water until we were choking and almost drowned. Then they kicked us in the belly. My friend, Nguyen Son Hong, could not tolerate his face being pushed in the water and it appeared that he drowned.

Nguyen Son Hong may not have been completely dead at that time, but they put him in a drain and forced us to cover his body with dirt and branches.

We were very afraid and exhausted. Our bodies were ragged and covered in blood, yet they continued to torture us. We had no more strength or courage to resist their questions and we acknowledged that we were spies. We believed that had we resisted them further we would have been murdered like our friend.

They took us to the border service 229. We were locked in a block house. Half of it was afloat and half of it was sunken. We lay there, in and out of consciousness, for two days. Then they took us to Mong Cai district to stay for five days. We couldn't eat and we only drank a gruel made from rice water. The Mong Cai police contacted the police in Haiphong. They came and collected Nguyen Van Hiep and myself and took us back to Haiphong. My other two friends, Nguyen Chi Cong and Nguyen Van Dai, who were from Quang Ninh, remained. They were from the Mong Cai district so the police there took responsibility for their fate.

Nguyen Van Hiep and I, who are both from Haiphong, were imprisoned at 126 Nguyen Duc Canh road. They locked us in a special cell for political offenders. The call was 4 square (metres). We were given ten minutes of fresh air and five minutes of hygiene. We were given a bowl of rice with a little vegetable and salt, two times a day. The food was not sufficient for our body and we were always hungry.

They asked us many questions every day for a period of three months. Why we had returned to Vietnam? What was our duty? Did we carry guns? Did we carry handbills? We answered that we had not been to Hong Kong. We also said that we were not spies and had not come back to Vietnam on a special mission of espionage. They asked us why we had admitted to being spies. They did not accept, that we had confessed because we were afraid they would have tortured us to death had we continued to claim our innocence.

We were charged with having been recruited as Chinese spies and of having returned to Vietnam for the purpose of destroying the Vietnamese regime. We received no trial, and were placed in detention for an undetermined time.

I was in prison for 6 years total. I was kept three years in a cell at 125 Tran Phu. I was later transferred to Lam Son-Thanh Hoa. The other inmates here were mostly republican officers of the old South Vietnamese Army. Their fate was the same as mine. At Lam Son we were required to perform hard labour which placed us in danger. We had to place mines in stone to demolish the rock. We then had to carry the stone to another place. We had to strafe 2 metres of stone. We had to crush the stone so that it became smaller. Many inmates died because of our hard labour. We were punished if we did not complete our work load. If we did not finish we could not eat. Our food was miserable and inadequate as it was. We had two small meals a day of manioc with sweet potato. We had very little rice. During one year alone 350 prisoners died of starvation and dysentery.

I stayed at Lam Son, Thanh Hoa for two years, then was transferred to Haiphong. My case had still not been decided and they wanted to investigate me further. They used many methods to get me to talk. They wanted to know the names of the men who had come back to Vietnam from China. They were interested to know the names of the people who had been in the China camps and wanted to know what the Chinese wanted us to do.

During my stay in prison my mother died in the confining zone, (She and my father had divorced 20 yrs ago), my two brothers were imprisoned for attempting to escape to Hong Kong and my sister remains in China.

Sometimes in prison I thought about killing myself so that I could end my miserable life. All that kept me going was the belief that one day I would find freedom and begin to live.

On September 1987 I was given permission to temporarily leave the prison. I was still under their authority and could be interned at any time. With my mother dead, our house taken, and my brothers in prison, I had no home to go to. I could not stay with my father and his wife because they knew that my presence in their house would cause them trouble. I lived with my father's sister. There was still the risk of trouble and they were afraid of the implications of my being in their house.

I had no rights and no way of making a living. When my sister had things to sell I would help her. One day in Quang Ninh I was arrested because I had no license for selling goods. After I returned back to our house the police come round again and they arrested me because I had gone over three days without reporting. They kept me in prison for five days. They said that if I made one more mistake they would send me to a re-education camp for three years.

My freedom was not real freedom. I asked permission to obtain a marriage license but I was told that I didn't have a family card, I didn't have a citizens card and that I must wait for my trial to finish. After my trial I could be put back in prison.

My family were sympathetic. They help me to obtain a marriage license. We decide that we must leave Vietnam.

On April 1988 my wife and I attempted to escape Vietnam. We got close to the border when we were arrested. I knew I had to escape otherwise I would be put back in prison. This time I knew it would be for ever. I ran. God help me, I was so afraid I ran. My wife could not escape and was arrested. I sought out my friends. We bribed the police and after twenty days my wife was free.

We stayed at my friends house then successfully crossed the border into China. We made our way to my relatives. We stayed with them for a short time while my wife recovered from her experiences.

July 1988 we left for Hong Kong and arrived August 1988.

I have now failed the screening test and the review board. If I am sent back to Vietnam my life will not be worth nothing. I still face the trial of the false charges of espionage set against me, and by leaving Vietnam I transgressed the rules of my temporary respite from prison.

I am neither a spy or a criminal, yet I have spent the last ten years of my life in detention. If I were to return to Vietnam I would rot, slowly, in a Vietnamese cell. My choice is to die now, cleanly and in Hong Kong, with the salt air in my lungs.

The reason I have not yet plunged a knife into my abdomen, is that there still exists some stubborn faith within, that convinces me I will find freedom.

ACCOUNT 2

Nguyen Van Son—22197, Sec 1, Whitehead Detention Centre. VRD:1/89

Born 10/11/61 in Xuan Ninh, Mong Cai—Quang Ninh (M).

Residence Section 10, Tho Xuan, Mong Cai, Quang Ninh.

I started school in 1969 and finished 1976. In 1977 I worked for a ship builder of Hai Ninh—Tien Tien factory. In early 1980 I became a militia man of the area during the war between Vietnam and China. My family was a labouring one. My father was an upright and diligent man. He used to struggle for justice and human rights. He won everyone's favour and became chief of security of the area.

In June 1980 the Vietnamese Government forced the ethnic Chinese groups to leave their homes. These included people with an ethnic Chinese husband or wife. Most of them were poor and could not afford to get a boat so that they could leave Vietnam. Many ethnic Chinese were forced into Special confining zones. My father was very sympathetic toward the ethnic Chinese and let it be known he disagreed with the policy of forcing them away from their homes. He was not arrested at that time, but he confided in our family that we might expect some trouble as a result of his having expressed his views.

During August 1980 some people who had been travelling from Haiphong to Mong Cai were robbed at the Mong Cai Bus Station. My father recognized it as his responsibility to help them. He asked Mr. Khong Minh Duc, who was in charge of the situation at the bus station, to help find a solution. While a solution was being sought to help these people, they attempted to leave Vietnam for China and were arrested at the border. My father was immediately accused of giving support to escapees. His sympathy toward the ethnic Chinese had made him vulnerable and this incident provided his enemies with the oppportunity of punishing him for his views. He was put in prison for eighteen months.

After this incident many other things went wrong for our family. I got the sack from the factory where I worked. I also was forced out of the militia group I had joined. Our family were placed under the surveillance of the local authority. Mr. Khong Minh Duc who had also been involved with the situation received no trouble.

I felt very angry toward the communists and decided to escape with my friend. We left Vietnam during October 1980 with the intention of going to Hong Kong through the mainland. When we attempted to cross into China we were arrested by the Chinese police and taken to Dong Xing camp.

Conditions in the camp were very poor. We did not have enough to eat and received very

little medical attention. Our future seemed dark. We were not aware of any international organization who knew of our circumstances. Inmates were beaten and ill treated regularly for small transgressions. After Mr. Bui Duc Sy was shot while attempting to escape, the whole camp demonstrated against our ill-treatment. We walked out of the camp and requested that we be allowed to leave for Hong Kong. The police came and gathered us together and took us back to the camp. I was amongst the five men who were arrested on suspicion of being leaders of the demonstration. The head man of the camp, Mr. Xam Pac ordered us to be tied up with wire and beaten. We were then forced to lie in the sun for hours.

After that I was taken to Kham Chau Prison. They beat me on several occasions. They tried to get information from me about who were the leaders of the demonstration. They suspected that it had been deliberately organized by a Vietnamese spy. I did not know about such matters and could not tell them anything. They then tried to force me to become a spy against Vietnam. I refused.

They detained me in Kham Chau for about a month after my interrogation. This time was very sad for me. I was afraid, lonely bored and miserable. I was young and they had no evidence against me so they allowed me to return to Dong Xing.

Soon after my return to Dong Xing I was called to see the leader of the camp. I was accused of being a trouble maker. They said I did not co-operate. I was blindfolded and taken to the border. At gun point I was told that I had to cross back into Vietnam. I knew there were many land mines and spikes in the area but I had no choice but to go back into Vietnam.

After I had crossed into Vietnam I was arrested by the frontier guards at To Chim post. They terrorized and beat me. They were convinced that I was a spy and tried to force me to confess. I refused to comply with their request. They continued to beat me. They then transferred me to the Security Army (759–323). While I was their I saw a friend of mine Mr. Duc beaten to death, because he refused to agree with their accusations. I was once again transferred to camp 14 Ha Lam, Quang Ninh Province, for questioning. After fourteen months detention I continued to tell them the truth and refused to sign any confession admitting to be a spy. They had no evidence to take to the court so they accused me of being a dangerous element and sent me to a re-education camp in Thanh Hoa, where political prisoners were detained.

At Thanh Hoa Prison we were given very littel food and we did not have sufficient clothes to wear. We were forced to work hard and long hours. The weather conditioins effected our capacity to work. My first job was to plant manioc. Each day I had to complete an area of 150m3 to 180m3. Three years later I was transferred to the brick making group. We had to make bricks (800 to 1000 a day) and collect material from the mountains. We worked eight hours a day. The wind which came across from Lao would cause problems for us.

Sometimes we were too cold and at other times we were too hot and could only work slowly. The prison keeper could beat us if we did not work quickly or whenever he liked. We were regarded as animals. Many prisoners died after severe beatings and from illnesses related to beatings and the lack of food.

On November 2nd, 1987 I left the prison under Nguyen Van Linh's amnesty. After I was released I still had to report to the local police station regularly. I could not go out of the area without permission and had to do unpaid labour when required.

My parents used to earn their living by fishing, but they were becoming old and so I would go with them to help them. One time when I was with them on our boat, the police came and arrested us. They thought that we were trying to make contact with the Chinese. The police confiscated our boat. They had no evidence against us and after interrogation they set us free.

I had no livelihood so I tried to get a job as a porter in the market but they forbid me to do this job. I had no rights in Vietnam. The police arrested me, beat me and threatened me, whenever they liked. I was afraid that they would put me back in the re-education camp, so when the opportunity came to escape to Hong Kong, I did.

I know that if I am returned to Vietnam I will be arrested. By escaping I have transgressed the rules of my parole. I have never done any harm to the Vietnamese communists regime and yet I have been severely punished. After a decade of searching for freedom and justice, Hong Kong is my last hope of survival.

ACCOUNT 6

Vu Danh Phi—72296, Sec. 1, Whitehead Detention Centre. Tran Thi Phong—72297, wife of Mr. Phi; Vu Dan Quang—72298, son; Vu Danh Ninh—72299, 2 yrs old; Vu Cong Hoang—24502, 4 mths old; Pham Thi Thu—72301, niece, 12 years (parents drowned during voyage). VRD: 755/89.

These are the conditions and reasons why I left my homeland and set forth on a dangerous journey to seek freedom.

My father: Vu Danh Loc, born 1926. (He died 1968 in a communist prison).

In 1952–1954, my father served in the French army.

In 1955, my father was re-educated and kept under surveillance. In 1960, the Vietnamese authorities re-issued the re-education policy. He was arrested and placed in detention at Lao Cai Prison on charges of being a reactionary; 1968, my father died in prison after being beaten severely. During the eight years that my father was in prison none of us was allowed to visit him. Following the death of my father my mother requested that his body be returned to her so that she could arrange for a proper burial. Her request was denied.

My mother: Vu Thi Thom born 1928 at Hai Duong.

Before and after 1955 she traded in fruit. After the arrest of my father life became very difficult for her. She had six children to bring up and very little merchandise to sell. When she heard that my father had died she suffered greatly. She now lives in Haiphong 267 Ly Thong Kiet St.

My sisters and brothers:

My eldest brother: Vu Danh Phuong born 1954 in Haiphong. He was penalized because of his father's former association with the French. He was denied job educational and opportunities. He remained at home to help my mother. After the death of my father he became neuropathic and was paralysed. He received no medical attention.

My eldest sister: Vu Thi Mai born 1950 in Haiphong. She was not allowed to attend school and stayed at home with my mother. She is now married and lives away from home.

My elder sister: Vu Tai Tam, born 1956 in Haiphong. She also was not allowed to attend school. She is now married and lives away from home.

My younger sister: Vu Tai Thao born 1959 in Haiphong. She was not allowed to attend school. She has since married and moved away from home.

My youngest sister: Vu Thi Huyen, born 1960. She attended school up to second grade. She is now married.

Information about Vu Danh Phi:

I was born into a family that was classified as being of a reactionary composition by the Vietnamese authority. I wasn't allowed to attend school. When I was seven years old I went to live with another family until 1966. At that time my boss made arrangements for me to study at night school. I managed to attend school to the seventh grade.

In 1973 I came back to my family to help my mother.

In 1974 I worked for Mr. Tran Quoc Trieu who owned a boat. My job was to ferry passengers across the river.

In 1976 I married Ms. Tran Tai Phuong who was the sister of my boss, Mr. Trieu.

January 1980 I was arrested by the Vietnamese police. They informed me that my boss Mr. Tran Quoc Trieu and his family had escaped from Vietnam. They assumed that because he was my brother-in-law that I had aided his escape. I had known nothing about his escape but the police did not believe me. They beat me severely. To escape further beatings I eventually agreed to sign a confession to a crime which I had not committed. I was detained for twenty one days, then transferred to Tran Pho Prison Haiphong. In this prison I was tortured by the police. All the time they said I was the organizer of my brother-in-law's escape.

After three months I was released but had to wait my trial. My family were not allowed to continue with our work on the river. Our livelihood had been taken away from us. I was very afraid what would happen when my trial came up. I explained my situation to my friend Mr. Hung, who agreed to help me escape.

We left Vietnam in a small boat. After six days we approached the border area. Our boat was discovered and we were shot at. We managed to escape the Vietnamese guards but our boat, which had been badly damaged started to sink. We were helped by the Chinese authorities and taken to Dong Xing.

The conditions in Dong Xing camp were very difficult. Many people had been there some time and their situation was much like ours. Some people tried to escape and were shot. Mr. Sy was shot in his stomach. We were all very angry and distressed. We gathered in the compound and demanded that we be allowed to leave for Hong Kong. Mr. Xam Pac said we could go. We all left through the gates. Later when we were walking toward the town the police came and after some struggles they took us back to the camp.

Several men were arrested as a result of this incident. We heard that they were tortured and put in prison. Some of them were released. We think others were punished by being taken to the border and forced to cross back into Vietnam. The Chinese authorities regularly looked for ways to frighten us into joining a special group to be trained as spies. They wanted us to act against the Vietnamese government.

While at Dong Xing our relative Mrs. Viet Ha was pregnant. She was not in good health because we did not get sufficient good food and we did not receive adequate medical care. There was a small room separated for women who were ready to deliver their babies.

After giving birth to her son Mrs. Viet Ha was very weak and as the condition in this camp was not fit for the birth-women, Mrs. Viet Ha caught a cold. She became weaker. One night (It was during February or March) her husband Mr. Cao Duc Duong came shouting and beating at the door. He made the best loud noise he could to announce to the camp master and other staff that his wife needed a doctor. A few minutes later the camp master came. Then he went for the doctor, or the vet as we named her. (The vet was not qualified as a doctor, but for our camp she acted as a doctor. She was slow and dirty. That's why we called her the vet.)

The vet came slowly with her medical box. She did not care that Mrs. Viet Ha was fighting for her life. She came in the room and began to examine Viet Ha. After thinking for awhile she opened her medical box, took a syringe and medicine, then gave Viet Ha an injection. But, after pulling out the syringe Viet Ha gave a cry and died. We believe the vet gave Mrs. Viet Ha the wrong medicine. Mr. Duong didn't know what to do but he knew that his wife was dead. She died when she should not have. Mr. Duong made a cry.

Then the camp began to spread the news of Viet Ha's death. Everyone knew that Duong and Viet Ha were a newly married couple and that they loved each other very much. But now Viet Ha had died. Many people in the camp came to see Viet Ha and pay their respects.

Mrs. Viet Ha was carried out to a stone bend out of the camp. She laid on that cold bend before when she was sick but now she laid there unknowing this world's bad thing to her, unknowing that she was free from the camp's control. Her body was there for the whole night. (We Vietnamese take very much care for the body of our people, relatives and friends. We want their body to be cleaned and have a good tomb. We would let the dead body wear new clothes and we bury them nicely.) But what a pity for Viet Ha. She had to lay on a cold stone bend in the open air without any care.

The next day, the camp master, Xam Pac, told us to move her body to the road side where we went to the stream. We wrapped Viet Ha with a plastic cloth and Mr. Duong was there to watch his wife with a guard. After another day still no coffin came. On the third day the coffin came. It was just six pieces of wood badly nailed together.

We went to the mountain nearby the stream and buried Viet Ha. The Vietnamese say that if a mother dies when she was breast-feeding her child, her spirit would go back to the child and take him or her with her. We made a false child in her arms with a banana tree so that she might think that it was her baby and that it might save her baby's life.

After buryng her Mr. Duong gave the baby to my wife to take care of him. But things happened as we thought, the baby died three months later. We buried him near his mother.

Some said it was Viet Ha who came back to take her baby and breast feed him. She had died when she was young: their spirits are always godly. (This is another of our Vietnamese sayings.)

But on the other hand we know that her baby died because of the camp's bad conditions.

The vet had indirectly killed two lives. What kind of punishment did she get from the Chinese government? Indeed, she got no punishment. To the camp master our lives were nothing. We were his enemies.

Many days later the vet avoided us, then she moved.

The weather at that time was quite wet and cold, drizzling rain all day and night. It added a more terrible feeling in our hearts, in our minds, for the death of Viet Ha and her baby in the year of 1981.

Three years later Mrs. Viet Ha's husband Cao Duc Duong knew that he must take his young wife and son's bones back to Vietnam. He believed that after three years her spirit would return and wish to be taken back to Vietnam. He escaped from Fangcheng. He knew that to escape was dangerous and he knew that to return to Vietnam was even more dangerous. He did this because he loved his wife and son. He went back to the mountain where his family were buried. He dug up their bones and took them back to Vietnam. He was arrested in Vietnam when crossing the border and charged with espionage. The Vietnamese authorities did let the family of Mrs. Viet Ha collect her bones and bury them. Cao Duc Duong received five years imprisonment. We do not know what has become of him.

On June 1984 I decided that there was little future for my family if we stayed in the camp, therefore I decided to escape with my wife and child. We were able to get to the beach before we were arrested by the police. They took us back to Dong Xing camp. They accused me of being a Vietnamese spy and beat me severely. After some days they took me and my son to the Vietnamese border. They kept my wife in Dong Xing. She was pregnant by three months at that time.

At the border the Chinese police pulled out their guns. They said that they would shoot us if we turned back. I was afraid for my wife who was left behind and I was also afraid for myself and my son to cross the mine field which extended for several miles either side of the border. We had no choice but to cross the border.

When we arrived on the Vietnamese side we were picked up by the frontier guards at post 212. For seven days at the frontier I was locked in a stone cellar without food. I was continuously beaten and interrogated. My little son was locked in another place. We were then taken to police post 14 in Quan Ninh. While in this prison I was accused of being a lackey for the Chinese and of acting against Vietnam.

During April 1986, I was taken to a re-education camp called Phi Liet Prison, Hai Phong. During the day time—6 a.m. to 8 p.m., I had to work very hard. Our work was also very dangerous. We had to make holes in the rock to place mines. After the rock side had been blown up we had to climb up. We would bring the boulders down. Each person was assigned three cubic metres. We received no protection to help us with our task. There were many accidents. We did not have sufficient food so our bodies were weak. I had two accidents. There were others who died as a result of their accidents.

At night time—9 p.m. to 12 p.m., I had to study politics. This was really their method of brain washing us. 1) We had to study the regulations of the camp. 2) We had to study the Communist party and the authority's line of policy. They instructed us in the superiority of socialism over capitalism. They instructed us that the Communist party belonged to the people who wished happiness for the people without private enterprise. They instructed us that the Capitalist system was represented by the ruling class, who were by nature corrupt. The majority of people living under the Capitalist system were miserable and unemployed. There was rampant inflation etc, etc.

On December 17th 1987 I was released to the charge of the local authorities. After three days my wife Tran Thi Phuong was released. After three years of separation we were together again. She told me of her experiences.

EXPERIENCES OF TRAN THI PHONG

After our attempted escape from Fangcheng we were taken to Dong Xing. I was placed in a separate room from my husband and son. Xampac and other staff beat me severely which caused me to have a miscarriage. After some days I was taken back to Fangcheng. I was very distressed because of the loss of our baby and distressed that I could not get any information about my husband and son. I cried and pleaded with the camp master to tell me about my husband and son. For a long time he refused to tell me anything. Much later he informed me that they had been forced back to Vietnam across the border.

My desperate situation and this news of my husband and son, led me to make a decision to kill myself. I set fire to my body. Some people in the camp prevented me from killing myself, although as a result of my actions I was seriously burned on my shoulder.

The camp master Xam Pac, who had come from Dong Xing tried to force me to have a marriage relationship with his friends. On May 1985 he forced me to have a relationship with Mr. Sang. Then in October 1985 he tried to force me to go with an official driver of the camp. He used many methods to try to persuade me. He would attempt to seduce me, then when I refused he would threaten me. After each of these two occasions he beat me.

On November 1985 I escaped from the camp with a girlfriend. We were on the beach when the police arrested us and took us back to the camp. I was locked in a cell for a month and beaten many times.

On February 1986 I escaped with Dam Khac Luc, but we were discovered and pursued by the camp staff. We ran to the Phong Thanh bridge where they arrested us. They beat Mr. Luc to death. I was beaten and fainted. When they revived me they took me to prison. They detained me for three months. Before releasing me they told me that if I told any Vietnamese that they had beaten Mr. Luc to death, I would be punished.

In July 1986 I made another escape attempt with three friends. We planned to go back into Vietnam. I thought that from Vietnam I could find my family then we could get a boat and sail to Hong Kong. We spent two days crossing the forest before reaching the border. After we had crossed the border we were arrested by the guards post 212. They took us to Ha Lam prison (police post 14, in Quang Ninh.) We were all locked in isolation cells.

While I was in prison I was accused of being a spy for the Chinese and of acting against the Vietnamese regime. They used many methods of interrogation and torture. They beat me and they used electric current through my nipples.

On March 1987 I was taken to Tran Phu Prison in Haiphong. I was kept locked in a cell with leg irons. I received very little food.

On December 20th 1987 I was released into the custody of the local authorities. I was always under surveillance. I lived in my mother's house at no 58 Tam Bac St, Haiphong. After three years of separation I met my husband again.

On February 1988 the local authorities expelled my family to the New Economic Zone called Dong Cuong Yen Bai. This area was reserved for the people considered to be dangerous to the communist regime. The conditions in this economic area were miserable

and punitive. There was no clinic or medicine for people who became sick. There was no school for the children. There were no homes for the labourers. We built what shelter we could from leaves and sticks.

Our work was to strip the bark from the cinnamon trees. Each person was assigned five trees a day. This meant fifteen trees for my family. My wife was pregnant and my son was small. We were unable to complete our task of fifteen trees. The management not only cut down our rations but also threatened that I would be put back in prison. I knew that it wasn't possible for my family to work any harder and I knew that the management would happily carry out their threat. I felt that I had no choice but to risk the dangers of escaping again and get my family out of Vietnam.

After five days of crossing the forest we arrived at my relatives home in Ben Dun, Haiphong. With help from our relatives we arrived in Hong Kong October 7th 1988.

Hong Kong is our last hope. We have spent ten years seeking freedom. We have not yet attained it. Our fear is we never will. If we are returned to Vietnam my wife and I will be imprisoned. I do not know the fate of my young children.

Mr. SIMON. Mr. President, I have inserted these stories into the RECORD because these are people who have been turned down for refugee status. Yet they face overwhelming problems, and I hope that we can work out something for them. Not all of the 45,000 boat people are political refugees, but some who are not now categorized as refugees are, and those I have mentioned here are illustrations of that. Ms. Stroud has provided the names and cases of some 27 about whom she knows the details and, she believes, are clearly political refugees. On the basis of their statements, they appear to fall into that category.

But again, unless the United States changes its basic policy toward Vietnam, we will continue to proliferate this kind of problem, even if we were suddenly to admit the 45,000 who are refugees in Hong Kong to our country, which no one advocates. The policy that we now have toward Vietnam serves our national passion, but not our national interest. We need a policy that serves the national interest. Vietnam is the third largest Communist country, behind only China and the Soviet Union, in numbers of people. Its people are desperate.

Let me commend here our colleague, Senator JOHN MCCAIN, and Senator BOB KERREY and Senator JOHN KERRY, all three of whom fought in Vietnam, and all three of whom are asking for reappraisal by our Government of our policies there.

I welcome the two forward steps that the administration has taken recently regarding Vietnam. Opening an office in Hanoi will improve our ability to deal with our national priority of resolving the status of those missing in action from the Vietnam war. Providing a token amount of aid to Vietnam—a million dollars of humanitarian assistance for prosthetic devices for the people of Vietnam—will help to bring closer the day that our Nation and Vietnam share a normal relationship, finally closing a painful chapter in our history.

Vietnam has become more cooperative with us on the MIA/POW issue. All of my suggestions for improvement in the relationship are contingent on their continuing to cooperate with us on these issues.

The British are critical of the United States, saying that our policy toward Vietnam is causing much of the problem and also that we criticize them for returning Vietnamese people, and yet we return people to Mexico and to other countries. There are differences, but there is also some validity to the British criticism.

I hope we can work out a policy that brings opportunity to these people who are now virtually imprisoned and brings a little more justice, freedom, and opportunity to the people of Vietnam.

Hong Kong is a vibrant city with an amazing economic growth, an average income of approximately $12,000, and an unemployment rate of approximately 1.2 percent.

But hanging over dynamic and vibrant Hong Kong like a heavy cloud is the agreement that has been reached between the PRC and the British on the future of Hong Kong. On July 1, 1997, Hong Kong will become Chinese territory.

As we consider what should be done on granting most-favored-nation status to the People's Republic of China, our concerns should be the long-term impact on civil liberties in the PRC. Our friends in Hong Kong are concerned about the short-term economic impact, and I understand that. But this is one occasion when we should be looking beyond short-term considerations.

The joint declaration in 1984 of Great Britain and the People's Republic of China included this language:

The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research, and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance, and foreign investment will be protected by law.

There are other good provisions in it. Article XIII of Annex I says:

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of nonsubordination, noninterference and mutual respect.

However, on April 4, 1990, President Yang Shangkun of the People's Republic of China issued what is called The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The Basic Law is a sort of constitution for Hong Kong to apply beginning July 1, 1991. When reading the Joint Declaration of 1984, there is the feeling of a great deal of self-government and autonomy granted to the 5.6 million people of Hong Kong. There are also positive things in the Basic Law, but there are other things that are deeply disturbing. For example, the Basic Law provides: "Any law returned by the Standing Committee of the National People's Congress [of the PRC] shall immediately be invalidated." That gives the dictators in Beijing the power to kill all Hong Kong legislation. When it comes to selecting members of the legislative body, we are told that it must be "in accordance with the assigned mumber of seats and the selection method specified by the National People's Congress [of the PRC]." Immigration decisions are to be made by China, not Hong Kong: "The number of persons who enter the region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government."

The Hong Kong Special Administrative Region "shall enact laws * * * to prohibit foreign political organizations or bodies from conducting political activities in the region, and to prohibit political organizations or bodies of the region from establishing ties with foreign political organizations or bodies." That could halt all political ties with the West, as well as Japan and Taiwan. As to selecting the chief executive for the Hong Kong Special Administrative Region, the Basic Law provides:

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress.

Presumably, the authorities in the People's Republic of China will determine what is "in accordance with the principle of gradual and orderly progress." That the PRC views things in somewhat less than a democratic fashion is illustrated by article 50:

If * * * the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.

Imagine a free and democratic government living with this one sentence of article 74:

The written consent of the Chief Executive Officer shall be required before bills relating to government policies are introduced.

Since the Chief Executive will be under the thumb of the PRC, China cannot only prevent any bill from being passed, but can prevent any bill

from being introduced. Toward the end of the Basic Law is article 158:

The power of interpretation of this law shall be vested in the Standing Committee of the National People's Congress [of the PRC].

The courts are to comply with the interpretations of the law that come from Beijing.

All of this is significant because if China is this insensitive to civil liberties in Hong Kong now and is not sensitive to the civil liberties of its own people, it is unlikely that it will be sensitive to the civil liberties of the people of Hong Kong when it suddenly takes over in 1997. There are those who argue that it is in China's economic self-interest to maintain the status quo in Hong Kong. My answer to that is first, there is no such thing as status quo. You either will move ahead or you will move back in civil liberties. Unless things change in China, Hong Kong will move back.

The British could give one great gift to the people of Hong Kong before they leave in 1997: self-rule. Unless civil liberties are accompanied by self-rule when the PRC takes over Hong Kong, I have serious doubts whether basic civil liberties are going to be protected after 1997. Dictatorial regimes, historically, have not been generous to new territory they acquire. The leaders of the PRC should remember that political freedom and economic growth in Hong Kong go together, and if one is diminished, the other will be diminished. Let me assure the leaders of the People's Republic of China that, just as certain as I am standing on the floor of the Senate, if you deny basic civil liberties the people of Hong Kong now have, the goose that lays the golden eggs—the Hong Kong economy—will lay far fewer golden eggs, and the economy of all of mainland China will be hurt. It is in the economic self-interest of the PRC that the political rights of the people of Hong Kong should be respected, but there is ample reason for fear on the part of the people of Hong Kong.

Hong Kong has a Legislative Council, which is the Parliament for the 5.6 million people. It is not too much to suggest to our friends in Great Britain that this Parliament be freely elected just as the House of Commons is.

I join the members of the British Parliament who have said in clear terms that the citizens of Hong Kong are entitled to the right to choose their legislators, as are people in free countries elsewhere. Listen to what a few of the members of the House of Commons have said in recent years:

The highly respected Edward Heath:

Far greater than any danger of haste is the danger of not having fully representative working government with experience by the time the handover takes place.

Dennis Canavan:

It would surely not be unreasonable to suggest the target that by, say, 1991, the entire Legislative Council should be directly elected on a universal franchise * * *. The head of that Council—the Governor, Chief Executive or whatever he is called—should also be elected from the membership of the Legislative Council.

A friend of some years, George Robertson:

The progress towards the more elected and representative government that is proposed in the White Paper is perhaps unduly cautious. The Government of Hong Kong must be ready in the 1987 review to consider holding direct election * * *. The danger now is not of Chinese over-reaction to democratic reform but of insufficient time before 1997 in which to create a strong, viable, locally based system which will withstand the inevitable pressure and tremors as 1997 advances.

The British tradition of freedom should not be compromised at this point. That British tradition of freedom has not been expressed as fully as it should be in Hong Kong. It is symbolized by one line in a National Geographic article on Hong Kong describing "politics, a path of public expression long denied to Hong Kongers." The British have generally done better. Unless there is a resolve on the part of the British and the People's Republic of China to expand the basic civil liberties of the people of Hong Kong, inevitably there will be slippage.

That makes it imperative that Great Britain give as much freedom as possible to the people of Hong Kong now, so that whatever narrowing of rights takes place after 1997, there will be less jeopardy to the basic liberty of the people of Hong Kong.

But it appears that is not what will happen, and I regret to say the Government of the United States has not spoken out strongly on behalf of freedom for the people of Hong Kong. The surest way to preserve freedom in this type of situation is to give it away, and the British should do a better job of giving it away.

The people of Hong Kong have had no serious voice in the Basic Law that the People's Republic of China has propounded. Even in Hong Kong today, the citizens of Hong Kong have too little voice in selecting their Legislative Council. Majority of membership is by various organizations, such as the Bar Association or the Medical Association. But no one pretends that those elected in this fashion are truly representative of the people of Hong Kong.

Underscoring the problem in Hong Kong was an article that appeared in the New York Times magazine of May 5, 1991, "Escape from Tiananmen Square, A Chinese Odyssey" written by Nicholas D. Kristof.

I shall quote a few sentences from that article about Liu Xiang, one of the leaders of the Chinese Student Democracy Movement in Tiananmen Square:

What Liu's 2-year ordeal also underscores is the way British overseers of Hong Kong sometimes seem to be doing Beijing's bidding. Sending a democracy movement activist back to China, to face the possibility of a long prison sentence is hardly in keeping with the professed British ideals of fair play and common decency. However, British authorities hold the view that the best way to manage Hong Kong is not to vex China but to maintain stability and allow for a graceful exit in 1997. Liu seems to have been a victim of that policy.

Liu managed to escape China and get into Hong Kong and then was turned over by the Hong Kong Government to the officials of China. Listen to what the article says at that point: "It was contemptible," he says. "We'd been betrayed by the Hong Kong Government. We were so shocked and angry, and we figured we'd be sentenced to 10 years in prison."

Then follows this paragraph:

The territory's British overseers have briefly, and as secretly as possible, provided refuge to some prominent democracy activists from China before sending them on to Europe or the United States. But the Hong Kong authorities have done this unenthusiastically, worried about the reaction from Beijing, and have systematically moved to curb criticisms about China that would upset its leadership. Hong Kong has not allowed some prominent Chinese dissidents living abroad to visit the territory. Films critical of China are censored.

If, before Hong Kong becomes part of the People's Republic of China, things have not improved significantly in terms of basic freedoms, it is certain they will not improve after 1997.

The British Parliamentarians who have suggested that their Government now give the people of Hong Kong the full right to elect their Legislative Council should receive the backing of the United States. If that were to happen today, it would make it a little more possible that Hong Kong could have a government in which the people of Hong Kong have a real voice after 1997.

While it is in China's economic best interest to avoid any curtailment of freedom in Hong Kong, when it comes to questions of basic freedom, China does not act in its own economic self-interest, Tiananmen Square being the most graphic example of that.

I would like to see the British give the people of Hong Kong greater freedom and greater voice in shaping their own destiny. I would also like to see the U.S. Government do more than sit on the sidelines twiddling our thumbs, pretending there is no problem. We ought to stand up for freedom wherever and whenever we can. Our relationship with the British is such that while they may not appreciate our doing it, it will not sour our strong and friendly relations with the United Kingdom.

The PRC can hardly be expected to show greater sensitivity to basic civil liberties and the right of self-rule if there is so little British leadership in this field. The official British reaction to the publication of the Basic Law, with its massive restrictions on the civil liberties of citizens, was that it

was a "remarkable document." Indeed, it is.

In these days when democratic forces are sweeping through much of the world, it is amazing to find a country like China that still does not welcome democracy and does not even provide a figleaf of protection to hide its harsh statements.

Martin Lee, one of the most articulate government leaders I have found in any nation, who is a member of the Legislative Council of Hong Kong, says bluntly: "No United States policy towards Hong Kong currently exists." That is, unfortunately, an accurate assessment. Hong Kong has approximately $7 billion of American investment and is the world's busiest port. It is the world's 4th largest financial center, and the 11th largest trading country in the world. The United States should not be indifferent to that nor to the fate of 5.6 million people there. The People's Republic of China should understand that we have a deep concern for the situation in Hong Kong.

Our administration should abandon its silence and speak openly and vigorously for the cause of freedom and democracy. That voice is needed now.

In conclusion, Mr. President, I believe these steps should be taken:

First, greater identification of this country with the Government of Taiwan, which has shown in recent months and years much greater sensitivity to civil liberties. Taiwan now has a genuine democracy.

Second, the United States should modify its policy on Vietnam, so that we reduce the cause of the flow of citizens from that country. As that is done, we can deal in a more realistic fashion with those who have fled the country.

Third, the United States should make clear our adherence to basic civil liberties and self-government for the people of Hong Kong, now and after 1997.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Connecticut [Mr. DODD].

Mr. DODD. Mr. President, before our distinguished colleague from Illinois leaves the floor, I wish to commend him on his statement, one of the most thoughtful I have heard in some time, an accurate description of events there.

I think the Senator from Illinois is 1,000 percent correct in identifying the absence of policy on Hong Kong, and I commend him for his remarks here this afternoon and hope our colleagues will pay attention to them and hope he might go a bit further and see if there is not some possibility of formulating some sort of legislative statement wherein this body might be able to express itself more definitely on the position he has articulated here this afternoon.

It is an event which is no longer in the public eye. It has been absent from any real debate or discussion. I think the Senator's comment about what authoritarian or totalitarian governments have done in the past where they were engaged in expansionist policy is correct and borne out by historical evidence.

We do not find an opening of democratic institutions. In fact, quite the contrary. They seem to expand not only territorially but also ideologically and philosophically. I think to allow that to occur without some sort of statements or expressions by this body would be a tragedy.

I am just moved by the Senator's comment and wanted to express those by him, Mr. President, before he left the floor.

I am glad to yield to my colleague.

Mr. SIMON. Mr. President, I thank my colleague from Connecticut, who is a highly respected member of the Foreign Relations Committee. I note that on the floor right now the Presiding Officer is Senator ROBB, also a member of the Foreign Relations Committee, and Senator MCCONNELL, who is a member of the Foreign Relations Committee.

I hope we can fashion some kind of a bipartisan statement that puts the United States very clearly on the side of freedom for the people of Hong Kong. I will work with my colleagues who are on the floor and others on the Foreign Relations Committee to try and get that done.

I thank my colleague from Connecticut.

SENATE ELECTION ETHICS ACT

The Senate continued with the consideration of the bill.

Mr. DODD. Mr. President, what is the present business before the Senate?

AMENDMENT NO. 246

The PRESIDING OFFICER. The present business is the amendment offered by the Senator from Connecticut to amendment No. 242.

Mr. DODD. Mr. President, I shall take a minute more for purposes of clarification on a particular matter that had come to the attention of our colleagues when this amendment had been offered in the past, and that is in the other body a distinction is made when it comes to copyright of literary productions. The other body makes the distinction between fiction and nonfiction.

It is the intent of the author of this amendment to not include any distinctions at all in dealing with the exception of literary productions. It is difficult enough as it is in some of these grayer areas to decide what is ethical or unethical behavior. To ask this body to also take on the role of becoming a literary critic goes far beyond, I think, what any of us would want to engage in.

So for the purposes of this amendment, as the author of this amendment, I wish to make it abundantly clear there are no distinctions, in my view, in dealing with literacy productions whether they be fiction or nonfiction. The exemption under the earned income provision would not make that distinction. That distinction should not be made.

I wanted to make that point clear during this debate, if I could, Mr. President.

I see my colleague from Kentucky on his feet.

Mr. MCCONNELL. Will the Senator yield for a question?

Mr. DODD. I am happy to yield to my colleague from Kentucky.

Mr. MCCONNELL. Is the Senator from Kentucky correct that the amendment of the Senator from Connecticut would allow a Senator to earn up to 15 percent of his Senate salary?

Mr. DODD. That is correct.

Mr. MCCONNELL. Will the Senator from Connecticut advise the Senator from Kentucky as to what types of activities might be permissible to earn that 15 percent under Senate Ethics Committee rules and regulations?

Mr. DODD. I thank the Senator for his question.

Under the amendment, the amendment identifies those areas in which a Member of the Senate may not collect compensation. We have not tried in this amendment to identify areas where a Member can. We have merely said that in the area of earned income, if there is a legitimate earned income to be made by a Member of this body, then from whatever source that allowable earned income may be, the cap on it would be 15 percent.

But rather than try and use our imaginations to come up with areas in which a person may earn income, we have merely proscribed those areas that are not presently included. The reason for that is the general proposition that Members of this body ought to dedicate as much of their time and energy to the business before the Senate, rather than to be seeking means by which they can qualify under the earned income provisions.

So we do not spell out suggestions, nor does this Senator from Connecticut have any at this particular moment he might offer as to what areas would be allowable, where allowable earned income may come in.

But I appreciate the question, and I am confident, given the creativity of some, that we will be confronted with sources of earned income that are not presently included.

Mr. MCCONNELL. Will the Senator yield for a further question?

Mr. DODD. I am happy to yield.

Mr. MCCONNELL. Is it the Senator's desire that Senators not be allowed to supplement their income at all with earned income? I was curious as to why

the Senator from Connecticut did not simply craft the amendment to prohibit any earned income outside.

Mr. DODD. In response to the Senator's question, we tried to do so to remain in conformity with the other body, which has a similar provision, so that we would be on a similar track. And that maybe in areas where earned income, under the circumstances, would not in fact jeopardize or interfere with the business of the Members, if those circumstances emerge and arise, then we are just merely suggesting that there be a cap on those areas rather than a total prohibition of it. That is the reason for the 15-percent cap.

Mr. McCONNELL. Will the Senator yield further?

Mr. DODD. I am happy to yield further.

Mr. McCONNELL. I was curious, again almost at the risk of restating my question, if a notion that earned income at all is inconsistent with a Senator's responsibility in this body, and the perception that he might have some undue influence from outside, I was wondering if it might not be a good idea for the Senator to craft the amendment to prohibit all earned income, not just for the Senate, but for the House, as well.

Mr. DODD. Let me just cover one area where I think earned income would be allowable, in my view. A number of our colleagues here engage in a philosophical, ideological debate on radio, discussing matters before this body for which there is a compensation. That is referred to as a stipend, in certain circumstances. Teaching—for instance, Supreme Court justices have a ban on honoraria, but they are allowed to teach at an institution of higher learning, which is allowed as an exception to the notion of honoraria.

So in that particular area, for instance, I would not have any difficulty with that in the stipend area. People might, I guess, consider that to be earned income. As such, you would be banned entirely from that kind of activity. I think that can play a very positive role and make a positive contribution to the understanding and educational levels of people in this country, as a number of our colleagues, as I mentioned earlier, are presently involved.

So a total ban—and there may be some other such ideas that emerge that would actually contribute—if you had a total ban on earned income, you would have to exclude even that kind of activity. So that is the reason for that.

Mr. McCONNELL. So it is envisioned by the Senator from Connecticut that it might be appropriate to have radio, perhaps, such as several of our colleagues have, or to receive a stipend for teaching at some institutions?

Mr. DODD. This Senator would have no difficulty with that.

Mr. McCONNELL. I thank the Senator.

Mr. DODD. Mr. President, I wish to make a parliamentary inquiry at this point. If the Senator from Connecticut were to ask for the yeas and nays at this point, that would preclude the Senator from Connecticut from offering any modifications to his amendment; is that not correct?

The PRESIDING OFFICER. The Senator would lose the right to modify his amendment if he asked for the yeas and nays at this time.

Mr. DODD. Further parliamentary inquiry: As I understand it, there are to be no votes today on these amendments, and the votes are being stacked to be voted on tomorrow—is that not correct—under a previous unanimous consent agreement?

The PRESIDING OFFICER. The Chair informs the Senator that there is no unanimous-consent agreement covering this particular matter. However, the majority leader made an announcement to that effect on Friday.

Mr. McCONNELL. If I may, the understanding with which we departed on Friday was that we would proceed with the Senator from Connecticut laying down his amendment. In all likelihood, I will lay one down and discuss one later this afternoon. Then, either late this afternoon or early tomorrow morning, we would attempt to enter into a unanimous-consent agreement, or further gentlemen's understanding, as to sequentially in what order we would take the amendments. And obviously, the amendment of the Senator from Connecticut would be first.

Mr. DODD. I thank the Senator from Kentucky.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the amendment of the Senator from Connecticut be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 247 TO AMENDMENT NO. 242

(Purpose: To provide for direct appeal to the Supreme Court of rulings on the constitutionality of the bill and amendments made by the bill)

Mr. McCONNELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL] proposes an amendment numbered 247 to Amendment No. 242.

At the end of the amendment add the following:

SEC. . EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if it has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

Mr. McCONNELL. Mr. President, this body has among its Members a number of excellent legal minds. Few have even been discussed as possible Supreme Court nominees. I am sure they would be able to hold their own admirably over in the Supreme Court chambers. But we are not a court of law. We are not bound by legal precedents, and any final determination on the constitutionality of this bill or any other such bill ultimately must be made by the Supreme Court.

Given the seriousness of the constitutional flaws in S. 3 and the massive effect this bill will have on fundamental first amendment freedoms, it is crucial that the Supreme Court be able to review and rule on this measure at the earliest possible date after enactment.

Therefore, I am offering an amendment to S. 3 that will provide for expedited Supreme Court review of any court order judgment or decree that turns on the constitutionality of this legislation.

The language of this amendment is taken from the flag-burning bill, which most of us voted on in the last Congress. There is a great deal of controversy regarding the constitutionality of the flag-burning bill. But the proponents of that bill, most of whom were from the other side of the aisle, made an exemplary effort to ensure that their bill was constitutional; they consulted with some of the most respected legal authorities in the country, and they added language to guarantee immediate Supreme Court review and constitutional challenges to that bill.

My amendment tracks that language forward. It provides an appeal may be taken directly to the Supreme Court from any interlocutory order, final judgment, or decree issued by any court which rules on the constitutionality of any provision of this act.

My amendment provides further that the Supreme Court shall, if it has not ruled on the issue previously, move the appeal on the docket and expedite it to the greatest extent possible.

I want to summarize the constitutional problems with S. 3, and the reasons for this important amendment.

First, S. 3 unconstitutionally punishes candidates who exercise their first amendment right to engage in unlimited speech. That punishment is meted out with public money.

Second, S. 3 unconstitutionally punishes private citizens who exercise their first amendment right to engage in unlimited independent expenditures. That punishment also is meted out with public money.

Third, S. 3 unconstitutionally discriminates against Americans who want to support Federal candidates running in other States.

Fourth, S. 3 unconstitutionally forces candidates who choose not to limit their campaign speech to include a misleading and degrading disclaimer in all of their political advertising.

The Supreme Court has spoken on these issues, and S. 3 has failed the constitutional test. We have taken an oath in this Chamber to uphold and protect the Constitution. The very least we can do to fulfill that oath is to make sure the laws we pass uphold and protect the Constitution. So before passing a massive bill like S. 3, which affects the first amendment rights of every American, we are duty bound to ensure that any constitutional harm caused by this bill is swiftly and justly remedied.

To those who feel S. 3 is constitutionally sound, my amendment should pose no threat whatever. To those who plan to vote for S. 3 but are worried about the bill's constitutionality, this amendment gives them the opportunity to minimize any harm to free speech values.

This is not a question of legal judgment. It is a question of whether this body is going to uphold the Constitution that we have all sworn to protect. I will be urging my colleagues to support this amendment when it is finally voted upon during the debate on S. 3.

Also, Mr. President, I ask that an article I wrote, which appeared in last Thursday's Washington Post as an oped piece regarding the constitutionality of S. 3, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ELECTION REFORM THAT FETTERS FREE SPEECH

(By Mitch McConnell)

There are plenty of good reasons to be against S. 3, the huge campaign finance bill lumbering through the Senate: It's a politicians' entitlement program, it's rigged for incumbents, and experts say it won't do anything to reduce campaign spending or special interest influences.

But the most serious reason for opposing S. 3 is that this bill is the most aggressive attack on free speech since the Alien and Sedition laws. Even if the bill limps through both houses and survives an expected presidential veto, it will be pronounced DOA on the steps of the Supreme Court.

S. 3 enforces limits in Senate election campaigns by imposing Draconian penalties on anyone who refuses to comply. This runs headlong into the Supreme Court case *Buckley v. Valeo*, which held that spending limits are essentially a limit on speech and therefore cannot be coerced.

The *Buckley* decision did allow Congress to offer candidates public money as an incentive to limit spending—provided that the system was completely voluntary. That is how presidential elections work: Candidates may forgo the subsidy (John Connally did in 1980), but they are not punished for ignoring the limits.

S. 3 is completely different: Nonparticipating candidates not only forgo public financing, but they also lose a valuable discount rate for their TV ads. And if they exceed the spending limit—even by $1—they trigger an avalanche of public money for their opponents. In a perverse twist on *Buckley*, S. 3 makes spending limits the "deal you can't refuse," using public money and other benefits to bludgeon candidates into submission.

S. 3's constitutional problems don't stop there. The bill gives candidates cold cash to battle "independent expenditures," efforts by private citizens to affect an election. Thus, David Duke could get millions of tax dollars to combat efforts against him by the NAACP and B'nai B'rith. In effect, S. 3 uses the power of the public purse to overwhelm private political speech.

The bill also discriminates against citizens who want to support candidates in other states. This ignores the fact that members of Congress are national figures. Many members, because of committee post or personal crusade, are leaders on issues of national significance. To draw state lines around the right to support candidates is to restrict every citizen's right—as an American—to participate in national issues and ideas. It is simply inane that a KKK member in David Duke's home state should have more right to contribute to him than an out-of-state civil rights worker would have to help his opponent.

It is also unconstitutional. The *Buckley* court found only one acceptable reason to restrict contributions: to prevent the appearance or reality of corruption. There is nothing about out-of-state money that makes it more corrupting than in-state money. If the Keating Five scandal taught us anything, it is that when a contribution has some connection to the state, even the most blatant quid pro quo can be justified as "constituent service."

Finally, S. 3 gets downright nasty in regulating political advertising. The bill forces all nonparticipating candidates to declare in their ads: "This candidate has not agreed to abide by the spending limits * * * set forth in the Federal Election Campaign Act." This disclaimer clearly is designed to embarrass such candidates, and implies that they are scofflaws when their only "crime" is the full exercise of their First Amendment freedoms.

Like the McCarthy era's "loyalty oaths," S. 3's degrading disclaimer would be struck down by the Supreme Court as an impermissible speech content requirement.

S. 3 has as much chance of surviving the Supreme Court as Saddam Hussein would have at an Army-Navy game. Before it gets that far, however, Congress should act responsibly regarding the bill's unconstitutionality. Members of Congress swear to uphold and protect the Constitution. If a bill's unconstitutionality is firmly established under legal precedents, as it is with S. 3, then it is the duty of every member to stand by the principles they have sworn to protect.

Advocates of a flag-burning ban went to extreme lengths to ensure its constitutionality, checking with legal scholars and adding language to require expedited Supreme Court review. No such efforts have been made regarding S. 3. So before this bill is passed out of the Senate, I will offer an amendment requiring expedited Supreme Court review of any constitutional challenge to it.

Congress should take special precautions with S. 3 precisely because it is not just another flag-burning bill that restricts the trivial right to torch Old Glory. S. 3 is a neutron bomb of a bill, aimed at the heart of political participation in America. By forcibly limiting campaign spending, S. 3 squeezes out small donors and handicaps challengers with broad support. If it ever became law, this bill would noticeably shrink every American's right to be involved in politics.

The most revolutionary election reform ever enacted in this country was the First Amendment. The core of that reform was the ideal of unlimited, unfetted, unregulated speech. It would be a tragic irony to compromise that ideal in the name of election reform.

Mr. McCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BOREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SIMON). Without objection, it is so ordered.

MORNING BUSINESS

Mr. BOREN. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business, with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT

Mr. BOREN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calender Order No. 80, S. 676, the Omnibus Transportation Employee Testing Act of 1991.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 676) to provide for testing for the use, in violation of law or Federal regulation, of alcohol or controlled substances by persons who operate aircraft, trains, and commercial motor vehicles, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 676

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This section may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

FINDINGS

SEC. 2. The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

TESTING TO ENHANCE AVIATION SAFETY

SEC. 3. (a) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"SEC. 614. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) TESTING PROGRAM.—

"(1) PROGRAM FOR [EMPLOYERS] *EMPLOYEES* OF CARRIERS.—The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(3) SUSPENSION; REVOCATION; DISQUALIFICATION; DISMISSAL.—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, in violation of law or Federal regulation, alcohol or a controlled substance.

"(b) PROHIBITION ON SERVICE.—

"(1) PROHIBITED ACT.—It is unlawful for a person to use, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) EFFECT OF REHABILITATION.—No individual who is determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—Any such individual determined by the Administrator to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section who—

"(A) engaged in such use while on duty;

"(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (c);

"(C) following such determination refuses to undertake such a rehabilitation program; or

"(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"(c) PROGRAM FOR REHABILITATION.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (a)(1) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such a program available to all *of its* employees in addition to those employees referred to in subsection (a)(1). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol [and] *or* controlled substances.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a), the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, [injury] *injury*, or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY ADMINISTRATOR.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this section that govern the use of alcohol and controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(3) INTERNATIONAL OBLIGATIONS.—In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation.

"(f) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.".

(b) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 614. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other laws and regulations.
"(f) Definition.".

TESTING TO ENHANCE RAILROAD SAFETY

SEC. 4. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(r)(1) In the interest of safety, the Secretary shall, within twelve months after the date of enactment of this subsection, issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations. Such regulations shall establish a program which—

"(A) requires railroads to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance;

"(B) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(C) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards, or orders issued under this title.

The Secretary may also issue rules, regulations, standards, and orders, as the Secretary considers appropriate in the interest of safety, requiring railroads to conduct periodic recurring testing of railroad employees responsible for such safety sensitive functions, for use of alcohol or a controlled substance in violation of law or Federal regulation. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards, and orders governing the use of alcohol and controlled substances in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(ii) establish the minimum list of controlled substances for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this subsection;

"(C) require that all laboratories involved in the controlled substances testing of any employee under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(D) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(E) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(F) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(G) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

"(H) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) The Secretary shall issue rules, regulations, standards, or orders setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as determined by the Secretary) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or a controlled substance. Each railroad is encouraged to make such a program available to all of its employees in addition to those employees responsible for safety sensitive functions. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this paragraph shall preclude a railroad from establishing a program under this paragraph in cooperation with any other railroad.

"(4) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(5) For the purposes of this subsection, the term [controlled] *'controlled* substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

TESTING TO ENHANCE MOTOR CARRIER SAFETY

SEC. 5. (a)(1) The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by adding at the end the following new section:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, issue regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such operators for such use in violation of law or Federal regulation.

"(b) TESTING.—

"(1) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) TESTING AS PART OF MEDICAL EXAMINATION.—Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by commercial motor vehicle employees issued before the date of enactment of this section.

"(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(f) APPLICATION OF PENALTIES.—

"(1) EFFECT ON OTHER PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this title or any other provision of law.

"(2) DETERMINATION OF SANCTIONS.—The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, in violation of law or Federal regulation, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(b)(1) The Secretary of Transportation shall design within nine months after the date of enactment of this Act, and implement within fifteen months after the date of enactment of this Act, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, in violation of law or Federal regulation, alcohol or a controlled substance. The pilot test program shall be administered as part of the Motor Carrier Safety Assistance Program.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the States selected pursuant to this subsection are representative of varying geographical and population characteristics of the Nation and that the selection takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this subsection shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this Act, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this subsection. Such report shall include any recommendations of the Secretary concerning the desirability and [implementation,] *implementation* of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for fiscal year [1990.] *1992.*

(7) For purposes of this subsection, the term "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2716(6)).

TESTING TO ENHANCE MASS TRANSPORTATION SAFETY

SEC. 6. (a) As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country;

(3) "Secretary" means the Secretary of Transportation; and

(4) "mass transportation" means al. forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b)(1) The Secretary shall, in the interest of mass transportation safety, issue regulations within twelve months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Service scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e)(1) No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by mass transportation employees issued before the date of enactment of this Act.

(3) In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f)(1) As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

Mr. HOLLINGS. Mr. President, in considering S. 676 before the Senate today, the Senate has an opportunity once again to send a strong and clear message to those people that operate our Nation's railroads, subways, buses, planes, and trucks that the use and abuse of alcohol and drugs must stop. S. 676, the Omnibus Transportation Employee Testing Act of 1991, is designed to prevent needless deaths attributable to the use of drugs and alcohol by the operators of our transportation systems.

This bill, cosponsored by Senator DANFORTH and 23 other Senators, is essentially the same bill that Senator DANFORTH and I introduced in the 100th and 101st Congresses. Those bills were debated, reported by the Commerce Committee, and passed overwhelmingly by the Senate twice in the 100th Congress and three times in the 101st Congress. However, regrettably for transportation safety, the 101st Congress ended without an agreement with the House on drug and alcohol legislation. This Congress, once again the Commerce Committee overwhelmingly has reported this bill, and I am hopeful that we can finally enact this important legislation.

We continue to see the need for this legislation. In the railroad industry, as recently as 2 years ago, an accident occurred every 12½ days in which either drugs or alcohol were involved. In the aviation industry, the Department of Transportation's [DOT] Inspector General reported in 1989 that 10,300 certified airmen had had their driver's licenses suspended or revoked for driving while intoxicated during the preceding 7 years. In the motor carrier industry, the National Transportation Safety Board recently found that 33 percent of the fatally injured truck drivers tested positive for alcohol and other drugs of abuse, with stimulants being the most frequently identified drug class. The most frequently cited cause of acci-

dents was fatigue, 31 percent, followed by alcohol and other drug impairment, 29 percent. Futhermore, of the drivers who were fatigued, 33 percent of those also were impaired by alcohol and/or other drugs.

Mr. President, our effort to require drug and alcohol testing programs for safety-sensitive transportation employees began 4 years ago, when 25 people tragically lost their lives in separate airline and rail passenger accidents. Specifically, in January 1987, 16 people died when an Amtrak passenger train was struck by a Conrail engine in Chase, MD. Two weeks later, nine people were killed when a Continental Express commuter aircraft crashed in the mountains near Durango, CO. More recently, three Northwest Airlines pilots were convicted for flying while intoxicated. The flight was between Fargo, ND, and Minneapolis, and the only reason we know these pilots were legally intoxicated is because the airport authorities called for testing under Minnesota State law—testing which is not required under current Federal law. On December 28, 1990, in Boston, 33 people were injured when the trolley car driven by an operator under the influence of alcohol crashed into another trolley car.

These incidents had at least one thing in common. Proof was established that the individuals responsible for the safety of the public in their respective modes of transportation either had been drinking alcohol or had used cocaine, marijuana, or the hallucinogenic drug, PCP. This use theatened their safety and the safety of the traveling public for whom they were responsible.

DOT has issued a series of transportation testing rules and regulations. However, the regulations cover drug testing but do not include alcohol testing. Our bill includes alcohol—another drug with serious consequences to safety. In addition, the drug rules covering mass transportation workers issued by DOT were struck down by the D.C. Court of Appeals in January 1990—the court found that the Urban Mass Transit Administration did not have sufficient agency authority to mandate drug testing. S. 676 corrects that deficiency. We cannot afford to have millions of commuters each day subject to the risks of drug and alcohol abuse by the operators of the systems. Furthermore, enactment of mandatory drug and alcohol testing, including random testing, ensures that such testing will continue despite possible changes in the administration officials charged with its implementation.

This legislation is eminently fair. It both mandates testing to protect the public and includes strong safeguards to ensure accurate testing and to protect innocent employees. These safeguards include a requirement that testing follow Department of Health and Human Services guidelines; that initial screening tests be followed up by confirmatory tests by laboratories that meet rigorous certification standards; and that the confidentiality of the results and medical histories be protected. It is also multimodal, covering the rail, aviation, motor carrier, and mass transit industries.

Mr. President, this legislation has broad support. The Senate has considered this critical safety legislation five times. This legislation has passed by large majorities five times. Our resolve in this 102d Congress is greater than ever. The safety of the traveling public demands nothing less than prompt enactment of drug and alcohol testing legislation for all commercial modes of travel.

It is critical that we take every step possible to improve transportation safety. By requiring drug and alcohol testing of safety-sensitive transportation workers, this legislation will significantly enhance the safety of the traveling public. It should be favorably considered by the Congress and signed into law as expeditiously as possible. Mr. President, those who drink alcohol and/or use illegal drugs have no business operating a train, plane, truck, or bus. They have no business assuming responsibility for innocent lives. I know the vast majority of transportation workers do not abuse the trust we place in them, but we cannot take the risk that a few of their colleagues do not share their dedication and professionalism.

Mr. President, I urge my colleagues to join us in supporting this important safety bill, and I look forward to working with House members toward enactment of this much needed legislation.

RANDOM DRUG AND ALCOHOL TESTING—THE NEED IS CLEAR

Mr. DANFORTH. Mr. President, on January 4, 1987, a Conrail engineer and brakeman who were smoking marijuana ignored a series of stop signals near Chase, MD, and collided with an Amtrak train. Sixteen innocent people were killed—many of them college students. One hundred and seventy people were injured. The National Transportation Safety Board [NTSB] concluded that the Conrail engineer's marijuana impairment resulted in the worst accident in Amtrak's history.

In response, Senator HOLLINGS and I have introduced and fought for the enactment of legislation to require drug and alcohol testing of safety-sensitive transportation workers. To date, actions taken on drug and alcohol testing have included the following:

Hollings-Danforth testing provisions passed the Senate twice during the 100th Congress, once by an 83-to-7 vote, and once by voice vote. In 1988, the House voted 377 to 27 on a nonbinding resolution in support of the Senate's testing language. However, testing did not become the law because a few key House Members blocked further action.

In November 1988, the Department of Transportation [DOT] issued drug testing rules. While Senator HOLLINGS and I believe this is a positive step, legislation is still necessary. The rules do not include alcohol testing; they are not consistent from mode to mode; intrastate operators are not covered; and testing needs to be the law, not subject to the whims of a future administration.

During the 101st Congress, Hollings-Danforth aviation, rail, and motor carrier testing provisions were approved by the Senate three times and included in four House-Senate conferences, but House conferees refused to discuss testing.

Reacting to a 1988 court decision blocking mass transit testing because the Urban Mass Transit Administration [UMTA] has no specific safety authority, the Senate Commerce Committee reported a bill to give DOT a statutory mandate to issue mass transit drug and alcohol testing rules.

On March 14, Senator HOLLINGS and I, along with 23 cosponsors, again introduced S. 676, a bill that mandates testing for critical aviation and railroad crews, bus and truck drivers, and mass transit workers.

S. 676 provides for preemployment, postaccident, periodic, reasonable suspicion, and random testing. It provides for privacy of individuals, confidentiality of test results and medical histories, and impartial testing methods. Also, it incorporates Department of Health and Human Services' [HHS] guidelines to require strict chain of custody practices to protect the integrity of specimens, and requires that positive initial screening tests be followed up with highly reliable GC/MS confirmatory tests by HHS certified labs.

During the past few months, the first statistics from DOT-mandated drug testing have begun to come in. Last December, the Federal Aviation Administration [FAA] reported that, between January and June 1990, only 561 drug tests were positive, or 0.47 percent of the 120,642 tests conducted. FAA said that 61.5 percent of the positives occurred during preemployment testing, 31 percent during random testing, and the remainder during postaccident, reasonable cause and return-to-duty testing.

On May 1, the Federal Railroad Administration [FRA] reported that positive test results from postaccident drug and alcohol testing were 3.2 percent during 1990, down from 6 percent in 1988. In 1990, only 2.2 percent of railroad employees tested positive in reasonable cause testing, down from 5.4 percent in 1988. Random testing positives were slightly over 1 percent, based on more than 35,000 tests. No results are available for truck and bus

driver testing, in part because certain types of motor carrier drug testing have been blocked by the courts.

This evidence is good news. It tells us that drug testing is working. It confirms our belief that drug testing, especially random testing, will deter substance abuse in public transportation.

There is more good news. In February, the U.S. Supreme Court, which had previously upheld drug testing of railroad workers, let stand a lower court ruling that upheld random testing of airline pilots, flight attendants, and maintenance workers. In April, the Ninth Circuit Court of Appeals in San Francisco upheld all aspects of DOT's motor carrier drug testing rules. This decision finally clears the way for implementation of random and postaccident drug testing of truck and bus drivers.

Faced with these court decisions, and armed with evidence of declining transportation drug use, labor leaders now are attempting to launch another, perhaps final, attack on random testing. They claim that the statistics show that there is no longer a need.

This is a dangerous ruse. Is random drug and alcohol testing still needed? We are convinced that there is no substitute for the deterrent effect of random testing. In fact, deterrence was and is today the major purpose of random testing. We cannot afford to wait until major accidents occur to catch those who are using illegal drugs. Instead, we must continue to deter drug use so that accidents are avoided and lives saved.

Is enactment of drug and alcohol testing legislation necessary? Consider the following:

In March 1990, three Northwest Airlines pilots spent the evening drinking in a Fargo, ND, bar. The captain drank 20 rum and cokes. The two copilots split at least six pitchers of beer. At 6:30 the next morning, they flew a commercial flight to Minneapolis, MN. Although notified by a bar patron that the pilots had been drinking excessively, FAA officials lacked the authority to require preflight alcohol testing. The pilots were tested after Minnesota airport authorities requested it under State law. Two hours after the flight ended, the captain had a blood alcohol content [BAC] of 0.13 percent. The other two pilots had BAC levels of 0.06 percent, well over the legal BAC limit of 0.04 percent. All three were convicted of flying under the influence.

DOT is being urged to scale back on testing since only 1 percent, or 265 rail workers, tested positive in 1990. In that same year, although aspects of FRA's drug and alcohol testing program have been in place since 1987, there still were 16 serious drug or alcohol related rail accidents. It only takes one locomotive engineer on drugs to cause a tragedy like the one at Chase.

On December 28, 1990, a Boston mass transit operator, with a BAC above 0.10 percent, crashed his trolley car into another injuring 33 people. UMTA lacks the authority to require either drug or alcohol testing of such transportation workers.

In February 1990, NTSB announced the results of a 1-year survey of fatal truck accidents in eight States: 33 percent of the fatally injured drivers tested positive for alcohol or other drugs of abuse. Now that DOT can proceed with random and postaccident drug testing, we have the tools to deter substance abuse by interstate truck and bus drivers, and to measure the results. However, DOT's rules don't cover intrastate motor carrier operators, such as local schoolbus drivers in Montgomery County, MD. Since that county began testing its schoolbus drivers for drugs and alcohol in March, two drivers have been fired and one has resigned after testing positive for illegal drugs.

Mr. President, I urge my colleagues to support S. 676. The continuation of DOT's alcohol and drug testing program is crucial to public safety. Enacting random alcohol and drug testing into law is a matter of life and death.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

Mr. BOREN. Mr. President, I move to reconsider the vote.

Mr. MCCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the bill is read a third time and passed.

So, the bill (S. 676), as amended, was passed as follows:

S. 676

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This section may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

FINDINGS

SEC. 2. The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

TESTING TO ENHANCE AVIATION SAFETY

SEC. 3. (a) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"SEC. 614. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) TESTING PROGRAM.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(3) SUSPENSION; REVOCATION; DISQUALIFICATION; DISMISSAL.—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, in violation of law or Federal regulation, alcohol or a controlled substance.

"(b) PROHIBITION ON SERVICE.—

"(1) PROHIBITED ACT.—It is unlawful for a person to use, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal

Aviation Administration with responsibility for safety-sensitive functions.

"(2) EFFECT OF REHABILITATION.—No individual who is determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—Any such individual determined by the Administrator to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section who—

"(A) engaged in such use while on duty;

"(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (c);

"(C) following such determination refuses to undertake such a rehabilitation program; or

"(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"(c) PROGRAM FOR REHABILITATION.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (a)(1) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (a)(1). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a), the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY ADMINISTRATOR.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this section that govern the use of alcohol and controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(3) INTERNATIONAL OBLIGATIONS.—In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation.

"(f) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.".

(b) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 614. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other laws and regulations.
"(f) Definition.".

TESTING TO ENHANCE RAILROAD SAFETY

SEC. 4. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(r)(1) In the interest of safety, the Secretary shall, within twelve months after the date of enactment of this subsection, issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations. Such regulations shall establish a program which—

"(A) requires railroads to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance;

"(B) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(C) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards, or orders issued under this title.

The Secretary may also issue rules, regulations, standards, and orders, as the Secretary considers appropriate in the interest of safety, requiring railroads to conduct periodic recurring testing of railroad employees responsible for such safety sensitive functions, for use of alcohol or a controlled substance in violation of law or Federal regula-

tion. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards, and orders governing the use of alcohol and controlled substances in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(ii) establish the minimum list of controlled substances for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this subsection;

"(C) require that all laboratories involved in the controlled substances testing of any employee under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(D) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(E) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(F) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(G) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

"(H) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) The Secretary shall issue rules, regulations, standards, or orders setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as determined by the Secretary) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or a controlled substance. Each railroad is encouraged to make such a program available to all of its employees in addition to those employees responsible for safety sensitive functions. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this paragraph shall preclude a railroad from establishing a program under this paragraph in cooperation with any other railroad.

"(4) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(5) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

TESTING TO ENHANCE MOTOR CARRIER SAFETY

SEC. 5. (a)(1) The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by adding at the end the following new section:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, issue regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such operators for such use in violation of law or Federal regulation.

"(b) TESTING.—

"(1) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) TESTING AS PART OF MEDICAL EXAMINATION.—Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial

methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by commercial motor vehicle employees issued before the date of enactment of this section.

"(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(f) APPLICATION OF PENALTIES.—

"(1) EFFECT ON OTHER PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this title or any other provision of law.

"(2) DETERMINATION OF SANCTIONS.—The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, in violation of law or Federal regulation, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(b)(1) The Secretary of Transportation shall design within nine months after the date of enactment of this Act, and implement within fifteen months after the date of enactment of this Act, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, in violation of law or Federal regulation, alcohol or a controlled substance. The pilot test program shall be administered as part of the Motor Carrier Safety Assistance Program.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the States selected pursuant to this subsection are representative of varying geographical and population characteristics of the Nation and that the selection takes into consideration the historical, geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this subsection shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this Act, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this subsection. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for fiscal year 1992.

(7) For purposes of this subsection, the term "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2716(6)).

TESTING TO ENHANCE MASS TRANSPORTATION SAFETY

SEC. 6. (a) As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country;

(3) "Secretary" means the Secretary of Transportation; and

(4) "mass transportation" means all forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b)(1) The Secretary shall, in the interest of mass transportation safety, issue regulations within twelve months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Service scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than

information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e)(1) No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by mass transportation employees issued before the date of enactment of this Act.

(3) In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f)(1) As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

Mr. BOREN. Mr. President, I move to reconsider the vote.

Mr. McCONNELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REFERRAL OF NOMINATION TO THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BOREN. Mr. President, the Committee on Commerce, Science, and Transportation having reported the nomination of Mr. Preston Moore to the position of Chief Financial Officer for the U.S. Department of Commerce, I ask unanimous consent that the nomination of Mr. Moore be referred to the Committee on Governmental Affairs for not to exceed 20 days.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NOS. 102–5 AND 102–6

Mr. BOREN. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from two treaties transmitted to the Senate Friday, May 17, 1991, by the President:

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Treaty Document No. 102–5); and

The treaty with Tunisia Concerning the Reciprocal Encouragement and Protection of Investment (Treaty Document No. 102–6).

I also ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The messages of the President are as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, with Annexes, done at Basel on March 22, 1989. The report of the Department of State is enclosed for the information of the Senate.

The Convention, which was negotiated under the auspices of the United Nations Environment Program with the active participation of the United States, makes environmentally sound management the prerequisite to any transboundary movement of wastes. To that end, it bars transboundary movements unless every country involved has consented. Even when consent is obtained, shipments must be prohibited when either the country from which the wastes are exported or the country in which the wastes will be disposed have reason to believe that the shipment will not be handled in an environmentally sound manner. The Convention also provides for the environmentally sound management of wastes that are illegally transported.

Upon receiving the unanimous recommendation of interested agencies, I personally authorized signature of the Convention by the United States last March. The notice-and-consent regime it establishes advances environmental goals that the United States has long held. We were one of the first nations to enact legislation prohibiting exports of hazardous wastes without the consent of the importing country. In March 1989, as negotiations of this Convention were concluding, I announced that the Administration planned to seek statutory authority to ban exports of hazardous wastes except pursuant to a bilateral agreement providing for the environmentally sound management of the wastes. We now have such agreements with Canada and Mexico. Proposed legislation supported by the Administration has recently been transmitted to the Congress.

I recommend that the Senate give early and favorable consideration to the Convention and its advice and consent to ratification.

GEORGE BUSH.

THE WHITE HOUSE, *May 17, 1991.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and the Republic of Tunisia Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on May 15, 1990. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment. The treaty is an integral part of U.S. efforts to encourage Tunisia and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the Parties also agree to international law standards for expropriation and compensation; to free financial transfers; and to procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible and give its advice and consent to ratification of the treaty, with protocol, at an early date.

GEORGE BUSH.

THE WHITE HOUSE, *May 17, 1991.*

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on May 17, 1991, during the recess of the Senate, received a message from the President of the United States submitting a nomination; which was referred to the Committee on the Judiciary.

(The nomination received on May 17, 1991, is printed in today's RECORD at the end of the Senate proceedings.)

CERTIFICATION REGARDING JAPAN'S TRADE IN SEA TURTLES MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 49

Under the authority of the order of the Senate on January 3, 1991, the Secretary of the Senate reported that on May 17, 1991, during the recess of the Senate, he had received a message from the President of the United States; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

On March 20, 1991, Secretary of the Interior Manuel Lujan and Secretary of Commerce Robert Mosbacher certified under section 8 of the Fishermen's Protective Act of 1967, as amended (Pelly Amendment), 22 U.S.C. 1978(a)(2), that nationals of Japan have engaged in trade in sea turtles that threatens the survival of two endangered species and severely diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international conservation program.

The certification by the Secretaries of the Interior and Commerce was made because Japan has allowed its nationals to import large amounts of raw hawksbill sea turtle shell and olive ridley sea turtle skin. All sea turtles were recognized as endangered by CITES on July 1, 1975, and listed on Appendix I of that convention, which prohibits all international trade in the listed products. When Japan joined CITES in 1981, it reserved on hawksbill and olive ridley sea turtles and continued to trade in them.

Since the certification, my Administration has held discussions with the Government of Japan in an effort to end its trade in sea turtles. The Government of Japan has responded by ending its trade in olive ridley sea turtles and announcing publicly its intent to withdraw its reservations to CITES on olive ridleys. It has also announced publicly its commitment to end all trade in hawksbill sea turtles by a date certain and make a decision in the near future on the specific date for ending the trade and for lifting its reservation to CITES for this species. Given these commitments, I have decided not to recommend specific measures to prohibit wildlife imports at this time pending an assessment within 30 days of the adequacy of Japan's actions to lift its reservation and bring to a conclusive end its trade in hawksbill sea turtles. Based on that assessment, an additional report will be made to the Congress.

GEORGE BUSH.

THE WHITE HOUSE, *May 17, 1991.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Energy and Natural Resources.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

ENROLLED JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on May 20, 1991, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolutions:

S.J. Res. 127. Joint resolution to designate the month of May 1991, as "National Huntington's Disease Awareness Month";

S.J. Res. 134. Joint resolution designating May 22, 1991, as "National Desert Storm Reservists Day"; and

H.J. Res. 141. Joint resolution designating the week beginning May 13, 1991, as "National Senior Nutrition Week."

The enrolled bills were subsequently signed, during the session of the Senate on May 20, 1991, by the Acting President pro tempore [Mr. REID].

MESSAGES FROM THE HOUSE

At 2:07 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1415. An act to authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes; and

H.R. 2127. An act to amend the Rehabilitation Act of 1973 to extend the programs of such Act, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1415. An act to authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes; to the Committee on Foreign Relations.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, May 20, 1991, he had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 127. Joint resolution to designate the month of May 1991, as "National Huntington's Disease Awareness Month"; and

S.J. Res. 134. Joint resolution designating May 22, 1991, as "National Desert Storm Reservists Day."

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-53. A concurrent resolution adopted by the Legislature of the State of North Dakota; to the Committee on Appropriations.

"HOUSE CONCURRENT RESOLUTION NO. 3037

"Whereas the Legislative Assembly in 1929 appropriated $130,000 for a study regarding construction of a bridge in the Fort Yates area; and

"Whereas the Fortieth Legislative Assembly in 1967 adopted Senate Concurrent Resolution Z urging Congress to give favorable consideration to the construction of such a bridge; and

"Whereas the Forty-first Legislative Assembly in 1969 adopted House Concurrent Resolution No. 45 urging Congress to give favorable consideration to United States Senate Bill 229, which would authorize the construction of the bridge; and

"Whereas Congress adopted Senate Bill 229, which authorized construction of the bridge as part of the 1970 Flood Control Act; and

"Whereas $470,000 has been expended on site studies, bridge design, and other preparatory work as of June 1972; and

"Whereas Congress, in 1990, authorized an additional expenditure of $250,000 to be used for study and design purposes; and

"Whereas no funds have been appropriated for construction of the bridge, and the bridge project is in danger of being deauthorized by law if further funds are not expended on the project; and

"Whereas the vast area of North Dakota and South Dakota lying between the Missouri River crossings at Bismarck, North Dakota, and Mobridge, South Dakota, a distance of over 100 miles, has been bisected by the Missouri River and Lake Oahe, requiring residents of, and travelers through, the area to travel great distances to establish river crossings; and

"Whereas a modern bridge crossing over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota, would be of great benefit to those engaged in agricultural activities in the area and would provide increased potential for industrial development, tourism, and recreational use of

areas endowed with great natural beauty which will otherwise lie dormant; and

"Whereas the construction of a bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota, would further provide social, medical, and academic opportunities for the residents of south central North Dakota and north central South Dakota; and

"Whereas the state of North Dakota is prepared to put forth full effort into assisting with the construction of a bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota; and

"Whereas there are engineers, contractors, suppliers, and adminstrators native to and located within this state who should receive priority consideration in the planning and construction of the new bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota: Now, therefore, be it

"Resolved by the House of Representatives of North Dakota, the Senate concurring therein, That the Fifty-second Legislative Assembly urges Congress to provide funds to the appropriate agency to construct a bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and be it further

"Resolved, That the Fifty-second Legislative Assembly urges the director of the State Department of Transportation to take whatever action is necessary to expedite the process leading ultimately to a new bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and be it further

"Resolved, That the United States Army Corps of Engineers is urged to specify the use of North Dakota engineers, contractors, suppliers, and administrators for the planning and construction of the bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and be it further

"Resolved, That copies of this resolution be forwarded by the Secretary of State to the Secretary of the Interior, the United States Army Corps of Engineers, the majorty leaders in the United States Senate and House of Representatives, each member of the North Dakota Congressional Delegation, and the director of the State Department of Transportation."

POM–54. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Armed Services.

"HOUSE JOINT MEMORIAL NO. 9

"Whereas the military objectives of Operation Desert Storm have been dramatically and decisively achieved with the defeat of the forces of Saddam Hussein and the liberation of Kuwait; and

"Whereas President and Commander-in-Chief, George Bush; Secretary of State, James Baker; Secretary of Defense, Richard Cheney; Chairman of the Joint Chiefs of Staff, General Colin Powell; and the commander of the United States and Allied Forces, General H. Norman Schwarzkopf are to be commended and congratulated for their unwavering commitment to the goals of Operation Desert Storm, for the masterful planning of the operation, the effective coordination of the allied forces, and the execution of a brilliant strategy in the air and on the field of battle which has brought a swift and sure conclusion to the conflict with minimal casualties; and

"Whereas throughout the conflict the men and women of the Armed Forces of the United States of America have performed their duties with exceptional competence, great courage and that singular vigor and determination which exemplify the very essence of the American spirit; and

"Whereas the victory achieved in Operation Desert Storm bears witness to the world's intolerance of tyranny and the efficacy of international cooperation in bringing about the defeat of those who would defy international law and challenge world order: Now, therefore, be it

"Resolved by the members of the First Regular Session of the Fifty-first Idaho Legislature, the House of Representatives and the Senate concurring therein, That President George Bush; Secretary of State, James Baker; Secretary of Defense, Richard Cheney; Chairman of the Joint Chiefs of Staff, General Colin Powell; the commander of the United States and Allied Forces, General H. Norman Schwarzkopf; and the men and women of the Armed Forces of the United States of America be commended for a job exceedingly well done: Be it further

"Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to President George Bush; to Secretary of State, James Baker; to Richard Cheney, Secretary of Defense; to General Colin Powell, Chairman of the Joint Chiefs of Staff; to General H. Norman Schwarzkopf, commander of the United States and Allied Forces, to the President of the Senate and the Speaker of the House of Representatives of Congress, and to the congressional delegation representing the State of Idaho in the Congress of the United States."

POM–55. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Armed Services.

"HOUSE JOINT MEMORIAL NO. 5

"Whereas it has been determined by the Department of Defense and the Congress of the United States that reductions will occur in the size of the military forces of the United States; and

"Whereas these force reductions will result in the elimination and consolidation of military bases throughout the United States; and

"Whereas maximizing the security of the United States with a downsized military establishment will necessitate utilizing the most cost-effective and versatile bases; and

"Whereas Mountain Home Air Force Base has been demonstrated to be a highly cost-effective and versatile base, with cost of operation among the lowest in the nation; and

"Whereas the state of Idaho has submitted a proposal to the United States Air Force to significantly increase the size, and thus the capabilities, of the existing training range used by Mountain Home Air Force Base, thereby demonstrating the commitment of the state of Idaho to the United States Air Force: Now, therefore, be it

"Resolved by the members of the First Regular Session of the Fifty-first Idaho Legislature, the House of Representatives and the Senate concurring therein, That the Congress of the United States should give strong consideration to both increasing the current mission and adding additional missions to Mountain Home Air Force Base: Be it further

"Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to President George Bush, to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States."

POM–56. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Commerce, Science, and Transportation.

"HOUSE JOINT MEMORIAL NO. 3

"Whereas the Congress of the United States in the waning moments of the 1990 Session, passed a new tax on boats and raised the gas tax also affecting boats; and

"Whereas boaters in all states pay gas tax and registration fees; and

"Whereas the boat fees range from twenty-five dollars for a sixteen foot boat to one hundred dollars for a forty foot boat; and

"Whereas additional taxes have a negative impact on state economic; and

"Whereas the United States Coast Guard has minimal enforcement in the State of Idaho; and

"Whereas the one hundred and twenty-seven million dollar collection will not be used to benefit boaters or the Coast Guard; and

"Whereas boaters will be paying the added federal gas tax and luxury tax; and

"Whereas the newly enacted law pertains to navigable waters, and the State of Idaho has not defined all navigable waters; and

"Whereas the United States House of Representatives voted 287–119 against boat "use fees" in 1987: Now, therefore, be it

"Resolved by the members of the First Regular Session of the Fifty-first Idaho Legislature, the House of Representatives and the Senate concurring therein, That we encourage Senator Symms, Senator Craig, Congressman Stallings and Congressman LaRocco to use their full influence to support House Resolution 534 to repeal the new federal boat tax before it is implemented: Be it further

"Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to President George Bush, to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States."

POM–57. A resolution adopted by the Senate of the State of Delaware; to the Committee on Commerce, Science, and Transportation.

"SENATE RESOLUTION NO. 16

"Whereas many Delaware citizens have expressed concerns with the extent of unwanted telephone solicitation calls, both computer and live, and have requested ways to curb such calls; and

"Whereas federal legislation is in existence governing the operation of Alternative Operator Services; and

"Whereas the Federal Communications Commission has issued a Proposed Notice of Rulemaking (FCC Docket No. 91–65) to establish rules and regulations designed to protect telephone customers from potential abuses of 900 services; and

"Whereas Delaware has no intrastate adult and group calling services; and

"Whereas the Delaware Public Service Commission, in Order No. 3182 approving the Diamond State Telephone Company tariff on 900 blocking, requested that the company provide notice of the availability of 900 Blocking in the Customer Guide Pages of its directories and directed the PSC staff to periodically notify the public of such blocking services: Now, therefore, be it

"*Resolved by the Senate of the 136th General Assembly of the State of Delaware*, That the United States Congress is hereby urged to expeditiously pursue legislation now pending before it to provide consumer rights regarding unwanted telephone solicitation calls: Be it further

"*Resolved*, That the Federal Communications Commission is hereby urged to diligently proceed with the establishment of regulations to provide protections for all consumers from the potential abuses of 900 Services: Be it further

"*Resolved*, That Senate Bills No. 2, 3, 4, 5, and 7 be withdrawn from consideration by the Senate: Be it further

"*Resolved*, That certified copies of this Senate Resolution be transmitted by the Secretary of the Senate to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, and to each member of Delaware's Congressional delegation, and to the Chairman of the Federal Communications Commission."

POM–58. A resolution adopted by the Senate of the State of Delaware; to the Committee on Commerce, Science, and Transportation.

"SENATE RESOLUTION NO. 16

"Whereas many Delaware citizens have expressed concerns with the extent of unwanted telephone solicitation calls, both computer and live, and have requested ways to curb such calls; and

"Whereas federal legislation is in existence governing the operation of Alternative Operator Services; and

"Whereas the Federal Communications Commission has issued a Proposed Notice of Rulemaking (FCC Docket No. 91–65) to establish rules and regulations designed to protect telephone customers from potential abuses of 900 services; and

"Whereas Delaware has no intrastate adult and group calling services; and

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"*Resolved by the Senate of the 136th General Assembly of the State of Delaware*, That the United States Congress is hereby urged to expeditiously pursue legislation now pending before it to provide consumer rights regarding unwanted telephone solicitation calls: Be it further

Resolved, That the Federal Communications Commission is hereby urged to diligently proceed with the establishment of regulations to provide protections for all consumers from the potential abuses of 900 Services: Be it further

Resolved, That Senate Bills No. 2, 3, 4, 5, and 7 be withdrawn from consideration by the Senate: Be it further

Resolved, That certified copies of this Senate Resolution be transmitted by the Secretary of the Senate to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, and to each member of Delaware's Congressional delegation, and to the Chairman of the Federal Communications Commission."

POM–59. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT MEMORIAL 8000

"Whereas the 1953 Federal Submerged Land Acts grants states control of coastal submerged lands; and

"Whereas the coastal states have increasing environmental and resource concerns within their territorial waters; and

"Whereas events taking place beyond the present three-mile territorial limits may have profound and at times damaging impact on the coasts of the coastal states; and

"Whereas State governance of coastal ocean beyond the present three-mile limit would be beneficial to the United States by creating additional enforcement capabilities; and

"Whereas any future income derived from that governance would add to the economic base of the coastal states; and

"Whereas the Magnuson Act maintains control of all living resources beyond three miles and there is a need for control of submerged resources to an equal distance; and

"Whereas such a change would truly extend our national territory to twelve miles off our nation's shoreline: Now, therefore

"Your Memorialists respectfully pray that the President of the United States and the United States Congress, in order to protect the resources of the United States, the coastal states, and the State of Washington, enact legislation to extend the coastal states' seaward boundaries off their coasts from three miles to twelve miles: Be it

"*Resolved*, That copies of this Memorial be immediately transmitted to the Honorable George Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM–60. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Energy and Natural Resources.

"HOUSE JOINT MEMORIAL 4016

"Whereas the recently concluded forty-five year defense production mission at Hanford generated a magnificent reservoir of human scientific and technical talent that is a tremendous national and regional asset; and

"Whereas the availability of the reservoir of talent, the pressing national need both to environmentally restore the Hanford Reservation and develop new hazardous and radioactive waste management technology for national and international use, and the regional need for economic activity to replace that from the production mission, all come together to impel new scientific and technical activity on the Hanford Reservation; and

"Whereas the superconducting magnetic energy storage system represents a valuable new electricity storage and distribution technology of vital importance to the nation and the Northwest region, and the Hanford Reservation has both the human talent and an ideal site for construction and operation of the engineering test model; and

"Whereas the fast flux test facility is a unique and immensely valuable national and international research facility that, among other things, is the only facility capable of producing certain radionuclides of interest nationally and internationally; and

"Whereas the Hanford Reservation is ideally suited to become one of the two planned sites for the National Science Foundation's laser interferometer gravitational-wave observatories but is not yet so designated; Now, therefore,

"Your Memorialists respectfully pray that the Congress of the United States, the President of the United States, the Secretary of Energy, and the Director of the National Science Foundation acknowledge the capability and therefore make the Hanford Reservation the premier national scientific and technical research and development center for management of hazardous and radioactive waste, construct the engineering test model of the superconducting magnetic energy storage system, maintain the fast flux test facility in operation, and locate the laser interferometer gravitational-wave observatory at Hanford: Be it

"Resolved, That copies of this Memorial be immediately transmitted to the Honorable George Bush, President of the United States, the Secretary of Energy, the Director of the National Science Foundation, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM–61. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Energy and Natural Resources.

"HOUSE JOINT MEMORIAL 4004

"Whereas expanding the markets for the agricultural commodities produced domestically would assist in improving the financial well-being of the nation's agricultural industry and assist in reducing the financial support required for certain agricultural programs; and

"Whereas expanding the production and use of gasohol in this nation would increase the market for agricultural commodities used in the production of ethanol and would decrease the amount of oil needed for each gallon of motor vehicle fuel; and

"Whereas the energy security of the United States is threatened by reliance on foreign oil, for petroleum products used and consumed in this nation; and

"Whereas, the imbalance of the nation's trade with other countries is due in part to the importation of foreign oil: Now, therefore,

"Your Memorialists respectively pray that Congress enact legislation which would require that the amount of ethanol contained in the total amount of all motor fuel sold annually in this nation by wholesale distributors be increased to five percent by volume by the year 1993: be it

"*Resolved*, That copies of this Memorial be immediately transmitted to the Honorable George Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM–62. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Energy and Natural Resources.

"HOUSE JOINT MEMORIAL NO. 6

"Whereas the introduction of wolves into the Yellowstone National Park and/or Central Idaho Wilderness will have a serious negative impact on the economic and natural resource base of the state of Idaho; and

"Whereas the Legislature strongly opposes the introduction of wolves into the Yellowstone National Park and/or the Central Idaho Wilderness: Now, therefore, be it

"*Resolved by the members of the First Regular Session of the Fifty-first Idaho Legislature, the*

House of Representatives and the Senate concurring therein, That we request Congress to direct the federal Wolf Management Committee to address state concerns before wolves are introduced into the Yellowstone National Park and/or the Central Idaho Wilderness. The Committee shall address the following:

"(1) That the federal government assume liability for all livestock, wildlife depredation, and personal injury to humans before any wolf introduction.

"(2) That a wolf shall not be protected in any way outside the Yellowstone National Park boundaries and/or the Central Idaho Wilderness boundaries and shall be controlled by state law; or the federal government agree to reimburse the state of Idaho for actual damage costs and expenses.

"(3) That the federal government allocated sufficient funding prior to wolf introduction to cover ongoing costs of wolf monitoring, control of problems wolves and additional monitoring of game populations due to impacts of wolves.

"(4) That baselines be established to assess the number of wolves which would be deemed acceptable and the impact on game populations which would be within acceptance limits in order to avoid an increase in the number of wolves or impacts on wildlife which would be unacceptable.

"(5) That an exact process for delisting be establishing and funded by the federal government, prior to introduction: Be it further

"Resolved, That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the Secretary of the Interior, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

POM-63. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Environment and Public Works.

"HOUSE JOINT MEMORIAL 4012

"Whereas Congress, in its budget resolution recognized the importance of the "user fee principal" as a sound means of funding the highway program; and

"Whereas preservation, protection, and continuation of this means of highway funding is vital to the nation's highway program; and

"Whereas Congress has for too long held back Highway Trust Fund moneys from their intended use in order to make it appear that the Federal deficit is not as large as it actually is; and

"Whereas Congress in its efforts to reduce the Federal deficit, passed a five-cent motor fuel tax increase of which two and one-half cents was earmarked for the Highway Trust Fund (two cents to highways and one-half cent to transit); and

"Whereas it should be noted that the five-cent motor fuel tax increase is scheduled to expire in 1995; and

"Whereas two and one-half cents motor fuel tax earmarked for the Highway Trust Fund cannot, under present provisions of the law, be spent but must remain and accumulate in the Trust Fund balance; and

"Whereas the moneys accumulated in the Highway Trust Fund balance are sorely needed by the states to use for work on their interstates and primary and secondary highway programs: Now, therefore,

Your Memorialists respectfully pray that Congress make the two and one-half cent motor fuel tax available for immediate obligation to the states in the 1991 fiscal year; or if not immediately obligated to the states that the states be allowed to use the advance construction interstate program currently in effect for that portion of the two and one-half cents that would be obligated to the state so that state moneys may be used now, and repayed when the two and one-half cents is obligated to the states; that Congress appropriate the balances accumulated in the highway and transit accounts to the states over the next five years so as to reduce the balance to an amount needed to pay obligated expenditures; that in 1995 when the five-cent motor fuel tax is due to expire, that it be extended and earmarked for the Highway Trust Fund and dedicated solely to highway purposes; and that State and local determination be allowed on whether the Highway Trust Fund Transit Moneys be used for transit or highways: Be it

"Resolved, That copies of this Memorial be immediately sent to the Honorable George Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM-64. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Finance:

"HOUSE JOINT MEMORIAL 4015

"Whereas traffic congestion is a serious problem in the nation's cities; and

"Whereas steps must be taken to reduce the daily influx of automobiles into our cities; and

"Whereas many employers provide or subsidize public transit passes for employees as a way of reducing the use of automobiles; and

"Whereas current federal income tax laws treat the total value of the employer-provided benefits, when those benefits are greater than fifteen dollars per month, as taxable income for employees; and

"Whereas some employers provide free parking for employees, which is treated as an untaxed employee benefit; and

"Whereas providing free parking for employees encourages the use of automobiles; and

"Whereas this disparate treatment of employer-provided benefits conflicts with the goals of the Urban Mass Transportation Act, which is designed to encourage use of public transit; and

"Whereas government policies should attempt to minimize traffic congestion; and

"Whereas increased use of transit would aid in achieving the nation's air quality goals: Now, therefore,

"Your Memorialists respectfully pray that the Congress amend the Internal Revenue Code to give equal tax treatment to these employer-provided benefits: Be it

"Resolved, That copies of this Memorial be immediately transmitted to the Honorable George Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM-65. A resolution adopted by the House of Representatives of the Senate of Illinois; to the Committee on Finance.

"HOUSE RESOLUTION NO. 412

"Whereas the United States is currently involved in negotiations with foreign nations to enter into significant treaties relating to this nation's trading position; and

"Whereas statements in negotiations concerning agricultural trade with nations of the European Community during the Uruguay Round of the General Agreement on Tariffs and Trade evidence the importance of thoughtful deliberations and the careful drafting of any agreement resulting from such negotiations to ensure that our nation's economic vitality is preserved and protected from unfair trade practices; and

"Whereas negotiations between the United States and the Republic of Mexico and Canada relating to a hemisphere free trade agreement must be carefully drafted to ensure that the United States does not sacrifice economic interests; and

"Whereas the effect of a treaty resulting from the General Agreement on Tariffs and Trade negotiations may be to reshape domestic agricultural policy, severely restrict the ability of states to establish food safety and environmental standards by preempting states' traditional power to protect the health and safety of their citizens, and subject states to disproportionate environmental and economic impacts; and

"Whereas the effect of a free hemisphere trade agreement may result in the loss of American jobs and a decline in the American standard of living resulting from cheap labor supplies in foreign markets; and

"Whereas under current "fast track" procedures, Congress is prohibited from amending certain agreements, including the General Agreement on Tariffs and Trade and any free trade agreement between the United States, the Republic of Mexico, and Canada; and

"Whereas under these procedures Congress may be faced with the dilemma of either voting to disapprove an entire agreement or to approve measures that may weaken vital interests of the United States; and

"Whereas resolutions have been introduced in the United States House and Senate to eliminate the "fast track" procedures applied to any agreement produced from the General Agreement on Tariffs and Trade and US/Mexico/Canada trade negotiations to preserve state legislative authority; therefore, be it:

"Resolved by the House of Representatives of the Eighty-Seventh General Assembly of the State of Illinois, That members of the Illinois Congressional delegation are urged to immediately act to ensure that United States' interests are protected from unfair trade practices; and be it further

Resolved, That the "fast track" procedures adopted by Congress regarding international trade negotiations be reexamined and eliminated in order to restore Congressional authority to fully deliberate provisions affecting the rights of states and the welfare of America's citizenry."

POM-66. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Finance.

"HOUSE JOINT MEMORIAL NO. 1

"Whereas California and a handful of other states are taxing pension benefits of former residents under the presumption that pensions are "deferred income" earned in their states and that these states are trying to collect income tax on the employer's portion which is not taxed when it is contributed; and

"Whereas these former residents who are having their pensions taxed are not enjoying any traditional benefits of state governments to which they pay the tax; and

"Whereas it could be argued that the taxation of pensions of nonresidents is nothing more than taxation without representation; and

"Whereas the Nevada Legislature has enacted a law that forbids any other state to collect a tax on pension benefits by forcing the sale of Nevada property; and

"Whereas the Nevada law is likely to be tested in the courts and is probably not the best solution to resolving this problem; and

"Whereas legislation was introduced in both the United States House of Representatives and Senate which bar states from taxing pensions of nonresidents in 1989: Now, therefore, be it

Resolved by the members of the First Regular Session of the Fifty-first Idaho Legislature, the House of Representatives and the Senate concurring therein, that we hereby respectfully request the Congress of the United States to enact, and the President of the United States to sign legislation which would prohibit a state from imposing an income tax on the pension income of individuals who are not residents or domiciliaries of that state.".

POM-67. A resolution adopted by the House of Representatives of the State of Indiana; to the Committee on Finance.

"HOUSE RESOLUTION 25

"Whereas the President of the United States and his representatives are presently negotiating with representatives of Mexico for a free trade treaty between the two nations; and

"Whereas American laborers have long struggled for reasonable working conditions, a living wage, and fair labor practice laws; and

"Whereas if a free trade agreement accelerates the economic integration process and precludes alternative approaches, more companies will shift their production to Mexico as an alternative to U.S. production, thereby causing the displacement of workers in previously protected Mexican industries, such as its domestic auto industry, as the result of intense pressures to lower their wages, and increasing the pool of potential U.S. immigrants; and

"Whereas by linking its economic fortunes with Mexico, the United States will open up a vast reserve of low-wage labor that will permit the past decade's policy of recreating low-wage jobs to continue, thereby discouraging domestic investment in technology, machinery, worker education and training to raise living standards for American workers; and

"Whereas the Mexican government's goal to become the small car production base for the North American market is shown by Ford Motor Company's decision to move one of its two production plants for building Escorts from the United States to Hermosillo, Mexico, and Volkswagen's decision to close its Pennsylvania plant in 1988 and replace its domestic output of Golf models with Mexican production; and

"Whereas because a free trade agreement could not resolve the institutional differences existing between the United States and Mexico and could not reconcile the two countries' differing social priorities created by the wide differential in the level of economic development between the United States and Mexico, that approach should be rejected; and

"Whereas although the United States has a responsibility to help ameliorate the serious economic distress that has burdened Mexico workers since 1982, it must do so in a way that also promotes the interests of American workers: Now, therefore, be it

"*Resolved by the House of Representatives of the General Assembly of the State of Indiana:*

"SECTION 1. That we urge the President of the United States to reconsider the advisability of entering into a free trade treaty with Mexico and we urge the Congress of the United States to take such steps as are necessary to prevent such a treaty from being adopted.

"SECTION 2. That a copy of this Resolution be sent to the President, the presiding officers and the majority leader and minority leader of each House of Congress, and the Indiana congressional delegation."

POM-68. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Foreign Relations:

"SENATE JOINT RESOLUTION 91-13

"Whereas on January 7, 1991, the Soviet Defense Ministry announced the deployment of additional troops to the republics of Lithuania, Latvia, Estonia, Armenia, Georgia, Moldova (formerly Moldavia), and Ukraine; and

"Whereas President Gorbachev has threatened to impose direct presidential rule on Lithuania in place of the democratically elected Government of Lithuania; and

"Whereas the peaceful resistance of the Lithuanian people has been met with brutal and violent actions by the Soviet armed forces; and

"Whereas on January 11, 1991, more than a dozen people were killed and over one hundred injured when Soviet troops stormed and took control of the Lithuanian Republic's radio and television station effectively cutting off the Lithuanian Government's chief means of communication with the Lithuanian people; and

"Whereas the United States Government has never recognized the forcible annexation of Lithuania, Latvia, and Estonia into the Soviet Union; and

"Whereas the United States Government has repeatedly communicated to President Gorbachev that the use of force in the Baltic States could seriously jeopardize United States-Soviet relations: Now, therefore, be it

"*Resolved by the Senate of the Fifty-eighth General Assembly of the State of Colorado, the House of Representatives concurring herein:*

"(1) That the President and Congress of the United States should (i) immediately review all economic benefits provided by the United States Government to the Soviet Union, (ii) determine whether those benefits should be suspended in light of Soviet actions in the Baltic States, (iii) immediately suspend all ongoing technical exchanges, (iv) consider withdrawing United States support for Soviet membership in the IMF, World Bank, or GATT, and (v) not proceed with the provision of MFN trade treatment until the following events have occurred:

"(a) Soviet troops refrain from obstructing the functioning of the democratic governments of Lithuania, Latvia, Estonia, and Ukraine;

"(b) The troops that were deployed following the January 7, 1991, announcement by the Soviet Defense Ministry are withdrawn;

"(c) Soviet authorities cease their interference with the telecommunications, print, and other media in these states;

"(d) Good faith negotiations between the democratically elected governments of the Baltic States and the Soviet Union on the restoration of the sovereignty of those states have begun; and

"(e) Concrete assurances are received from President Gorbachev that grain purchased with United States credits will not be used to coerce the Baltic States or Ukraine, or any republic of the Soviet Union, to sign or comply with the Union Treaty.

"(2) That the United States should consult with and encourage our allies to follow a policy similar to that outlined in this Resolution.

"(3) That the United States, in the spirit of our Declaration of Independence two hundred fifteen years ago, should recognize the republics of Lithuania, Latvia, Estonia, and Ukraine, which have all proclaimed a desire to become independent: Be it further

"*Resolved*, That copies of this Resolution be transmitted to the President of the United States Senate, to the Majority Leader of the United States Senate, to the Minority Leader of the United States Senate, to the Speaker of the United States House of Representatives, to each member of Congress from the State of Colorado, to United States Representative Bob McEwen of Ohio, and to President George Bush."

POM-69. A joint resolution adopted by the Legislature of the State of Wisconsin; to the Committee on Governmental Affairs.

"SENATE JOINT RESOLUTION 5

"Whereas the POW/MIA Accountability Bill, H.R. 3603, introduced by Congressman Denny Smith, directs the heads of federal departments and agencies to disclose information concerning U.S. armed forces personnel classified as prisoners of war or missing in action from World War II, the Korean conflict and the Vietnam conflict; and

"Whereas evidence is mounting that a number of these soldiers, particularly in southeast Asia, are still being held against their will in prisoner of war camps; and

"Whereas thousands of American soldiers who fought for freedom and democracy in World War II, the Korean conflict and the Vietnam conflict have never returned home; and

"Whereas, these wars ended many years ago, yet the federal agencies still keep information classified about missing servicemen, including live-sighting reports; and

"Whereas for the families and friends of these honored Americans, these wars will not end until the fate of their loved ones is resolved: Now, therefore, be it

"*Resolved by the senate, the assembly concurring*, That the Wisconsin legislature urges congress to pass H.R. 3603 requiring federal departments and agencies to disclose information concerning U.S. armed forces personnel clasified as prisoners of war or missing in action from World War II, the Korean conflict and the Vietnam conflict; and, be it further

"*Resolved*, That the Wisconsin legislature urges the President of the United States to support the enactment of H.R. 3603 and to ask federal departments and agencies to disclose informationn concerning those personnel to enable them to be brought home; and, be it further

"*Resolved*, That the chief clerk of the senate shall transmit copies of this joint resolution to the President of the United States, the president of the U.S. senate, the speaker of the U.S. house of representatives and each member of the congressional delegation from this state."

POM-70. A resolution adopted by the Council of the City of Sweetwater, Florida favoring the issuance of a commemorative postage stamp honoring the coalition forces

which served during Operation Desert Shield and Operation Desert Storm; to the Committee on Governmental Affairs.

POM-71. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on the Judiciary.

"HCR 10

"Whereas the Congress continues to mandate and assign additional programs and responsibilities to the states and political subdivisions within such states; and

"Whereas the Congress does not provide the funding for such programs and responsibilities; and

"Whereas the states and political subdivisions of such states do not have the funds, or in poor economic times, the ability to raise such funds; and

"Whereas under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever ⅔ of both Houses deem it necessary; and

"Whereas we believe fiscal responsibility by the federal government is necessary to restore the United States economy: Now, therefore be it

"*Resolved by the House of Representatives, the Senate concurring:* That this body proposes to the United States of the United States that procedures be instituted in the Congress to add a new Article to the Constituthat of the United States, and that the state of New Hampshire urges the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring that the federal government shall not mandate or assign any new, expanded or modified programs or responsibilities to any state or political subdivision of any such state in such a way as to necessitate state or political subdivision expenditures, unless such programs or responsibilities are fully funded by the federal government, or unless such programs or responsibilities are approved for funding by the state or political subdivision of such state; and

"That copies of this resolution be sent by the secretary of state to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate and to the New Hampshire members of both Houses of Congress."

POM-72. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on the Judiciary.

"HCR 2

"Whereas with each passing year this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues, so that the public debt now exceeds hundreds of billions of dollars; and

"Whereas the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the federal government to curtail spending to conform to available revenues; and

"Whereas knowledgeable planning, and fiscal prudence, require that the budget be in balance; and

"Whereas believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

"Whereas under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever ⅔ of both Houses deem it necessary; and

"Whereas we believe such action vital: Now, therefore, be it

"*Resolved by the House of Representatives, the Senate concurring,* That this body proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the state of New Hampshire urges the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring a balanced federal budget; and

"That copies of this resolution be sent to the secretary of state, to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate, and to the New Hampshire members of both Houses of Congress."

POM-73. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Rules and Administration.

"HOUSE JOINT MEMORIAL NO. 8

"We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-first Idaho Legislature, do hereby respectfully represent that:

"Whereas the Smithsonian Institution has expressed interest in expanding the National Air and Space Museum; and

"Whereas Denver Stapleton Airport is the only western site being considered for this facility; and

"Whereas the current Stapleton Airport is an excellent and natural facility for the placement of the Smithsonian National Air and Space Museum Extension; and

"Whereas locating a branch of the Smithsonian Museum in the West would enable millions of new visitors an opportunity to see the treasures of the Smithsonian; and

"Whereas the Smithsonian National Air and Space Museum Extension would provide an unparalleled educational resource for the people of Idaho and all citizens of the western states; and

"Whereas the National Air and Space Museum Extension would attract over a million out-of-state visitors a year, many of whom would take advantage of their proximity to tour other states of the west, including Idaho; and

"Whereas locating this facility in Denver would save the taxpayers over one hundred and forty million dollars: Now, therefore, be it

"*Resolved* by the members of the First Regular Session of the Fifty-first Idaho Legislature, the House of Representatives and the Senate concurring therein, that we applaud and support efforts to secure the Smithsonian National Air and Space Museum Extension at the Stapleton International Airport. We urge the members of the Regents of the Smithsonian to consider the advantages of this unique location and to act favorably upon this location: Be it further

"*Resolved,* That the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the Regents of the Smithsonian Institution, to the President of the Senate and to the Speaker of the House of Representatives of Congress, and to the congressional delegation representing the State of Idaho in the Congress of the United States."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PRESSLER:

S. 1101. A bill to require the Federal Communications Commission to prescribe standards for AM stereo radio broadcasting; to the Committee on Commerce, Science, and Transportation.

By Mr. MOYNIHAN (for himself, Mr. BURDICK, Mr. BOREN, Mr. INOUYE, Mr. AKAKA, Mr. DODD, Mr. DURENBERGER, Mr. DASCHLE, and Mr. COHEN):

S. 1102. A bill to amend title XVIII of the Social Security Act to provide coverage of qualified mental health professionals services furnished in community mental health centers; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 1103. A bill for the relief of the estate of Dr. Beatrice Braude; to the Committee on the Judiciary.

By Mr. DURENBERGER:

S. 1104. A bill to amend title II of the Social Security Act to provide for a waiver of the 5-month waiting period for disability insurance benefits for certain terminally ill individuals; to the Committee on Finance.

By Mr. BENTSEN:

S. 1105. A bill to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRESSLER:

S. 1101. A bill to require the Federal Communications Commission to prescribe standards for AM stereo radio broadcasting; to the Committee on Commerce, Science, and Transportation.

AM RADIO IMPROVEMENT ACT

Mr. PRESSLER. Mr. President, I am pleased to introduce legislation today that directs the Federal Communications Commission to initiate the adoption of rules to govern AM stereo radio transmission equipment standards. This action is long overdue.

In this country, the AM radio band has provided Americans with news, talk, and music for many decades. I am proud to say that my home State of South Dakota has a number of fine AM radio stations providing listeners with excellent programming.

However, the quality of AM reception in the far reaches of my State is low. The thousands of farmers and ranchers in rural South Dakota, many of whom are without FM stereo, want to receive better quality sound. AM stereo technology offers a good solution because it can broadcast greater distances than FM stereo.

Unfortunately, while the technology exists for stations to broadcast in AM stereo, nationally less than 30 percent do so. This delay in accepting AM stereo technology is prolonged by the absence of an accepted equipment standard.

In 1981, the FCC declined to choose a standard AM stereo system. It wanted to allow the marketplace to decide this issue. But the inability of the market to decide between competing systems has left consumers, equipment producers, and broadcasters in limbo. It is important for the FCC to prevent further confusion in this area by taking action now.

While we are now witnessing the dawn of an extraordinary technology—digital audio broadcasting—we need to act to improve existing broadcasting mediums. My legislation would give AM stations the opportunity to remain a vital part of American broadcasting.

One needs only to look at Japan to understand how much this legislation is needed here. Two weeks ago the Post Ministry of Japan decided to abandon its policy of allowing the marketplace to settle on one system and adopt a single AM broadcast system—Motorola's C-QUAM. This decision will provide uniform AM stereo throughout Japan. America needs to act now to avoid falling further behind in the development of AM stereo.

Mr. President, I ask unanimous consent that the text of my bill appear in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1101

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "AM Radio Improvement Act of 1991".

SEC. 2. RULEMAKING.

The Federal Communications Commission shall—

(1) within 60 days after the date of enactment of this Act, initiate a rulemaking to adopt a single AM radio stereophonic transmitting equipment standard that specifies the composition of the transmitted stereophonic signal; and

(2) within 180 days after such date of enactment, adopt such standard.

By Mr. MOYNIHAN (for himself, Mr. BURDICK, Mr. BOREN, Mr. INOUYE, Mr. AKAKA, Mr. DODD, Mr. DURENBERGER, Mr. DASCHLE, and Mr. COHEN):

S. 1102. A bill to amend title XVIII of the Social Security Act to provide coverage of qualified mental health professionals services furnished in community mental health centers; to the Committee on Finance.

MENTAL HEALTH CARE AMENDMENT ACT

• Mr. MOYNIHAN. Mr. President, today, I rise to introduce the Mental Health Care Amendment Act of 1991. Joining me in this effort are Senators BURDICK, BOREN, INOUYE, AKAKA, DODD, DURENBERGER, DASCHLE, and COHEN.

We were able to include in last year's omnibus budget reconciliation package a provision which extends direct Medicare part B reimbursement for partial hospitalization services. The bill we introduce today will extend direct Medicare reimbursement to three groups of qualified mental health professionals when their services are provided within a community mental health center. These provider groups include psychiatric nurses, marriage and family therapists, and clinical mental health counselors. Professionals under these titles include only those individuals who have training and experience in the delivery of mental health services.

Over 12 percent of the elderly have some diagnosable mental disorder and 22 percent of all suicides occur in Americans 65 years old and older. Of those eligible for Social Security disability insurance [SSDI] 22 percent are disabled as a result of mental illness.

Despite their need, studies indicate that older patients underuse mental health services—often because of insufficient access to mental health care. This is especially true in rural and underserved areas where, with the exception of community mental health centers, mental health care can be difficult to obtain. The elderly are perhaps the most likely to benefit from the mental health support services provided in community mental health centers. Indeed, in our society where families are now more widely disbursed than at any other time, and as the population ages, intervention services can relieve depression and other emotional disorders which may be associated with the aging process.

The provision of mental health care for those suffering from mental illness in later years can be an effective as well as a cost-effective treatment. Indeed, older patients who utilize mental health treatment reduce medical expenses more than young ones. The elderly husband of an Alzheimer patient is under tremendous stress throughout the process of providing basic care to his spouse. Stress can have particularly devastating effects not only on the emotional well-being of the individual but also on the physical condition of the body.

There is little doubt of the need among the elderly for supportive community-based therapeutic services, and we can meet it through improved access to the services of psychiatric nurses, marriage and family therapists, and mental health counselors who practice in community mental health centers. These provider groups are all trained at the master's level and have undergone extensive clinical experience.

A psychiatric and mental health nurse is a licensed, professional nurse who has demonstrated expertise in psychiatric and mental health nursing practice through a formal review process. The demonstrated level of performance exceeds that which is acquired in basic nursing education or that which is expected of a beginner in the field. The psychiatric and mental health nurse demonstrates the profession's standards of knowledge, experience and quality of specialty care. The psychiatric and mental health nurse functions in a multiplicity of settings and with a variety of patients or client populations with serious mental illness. The role encompasses working directly with patients or clients and their families, including in community-based settings, hospitals, community mental health centers, and private practice. Direct nursing care functions include psychotherapy with individuals, groups, or families and other direct nursing care functions. Nurses provide a wide range of mental health services, including screening and evaluation, home visits, health teaching, medication implementation and supervision, and case management.

The specialist in psychiatric and mental nursing is distinguished by graduate education, supervised clinical experience and a depth of knowledge, competence, and skill in the practice of psychiatric and mental health nursing.

Marriage and family therapists provide valuable mental health services by helping people within the context of their families and the communities in which they live. They diagnose and treat mental and nervous disorders within the family system and by utilizing systemic intervention techniques. A marriage and family therapist has completed at least a masters degree program and has no less than 2 years of professional clinical experience.

Mental health counselors, a significant number of whom work at community mental health centers, are educated and trained to provide mental health services to individuals, groups, and families. At a minimum, these qualified professionals must possess a masters degree in counseling or a related mental health field, 2 years of post-masters supervised clinical mental health experience, and State licensure/certification—or national certification in States without licensure/certification laws.

Based on a Congressional Budget Office preliminary estimate prepared for me last year this provision is estimated to cost approximately $11 million over 5 years.

Recently I introduced S. 62, the Homeless Mentally Ill Outreach Act of 1991, with the cosponsorship of my colleague, Senator DANFORTH. This legislation would help alleviate the chronic problem of the homeless mentally ill who are the best example of the failed

commitment in the past 10 years to community mental health centers. Without adequate community based programs or hospitalization the mentally ill have inevitably been left to the only place available to them, the streets. S. 62 would ensure that States identify, evaluate, and develop a plan of care for the mentally ill homeless population. Outreach teams composed of mental health professionals and others would identify mentally ill persons in need of medical treatment, and provide transportation to assessment and referral centers which may in some States include CMHC's. These centers will provide emergency psychiatric intervention, psychiatric evaluations, medical treatment necessary to achieve stabilization, temporary room and board, assistance in applying for entitlement programs, referral services, and individualized treatment plans and case management. All of these services are currently being offered by many of the all too few CMHC's around the country.

All of this fits well together: our inclusion last year of reimbursed partial hospitalization services in CMHC's, extension of Medicare remibursement for those who provide mental health treatment services, and finally our mentally ill homeless legislation which will bring those in greatest need into the facilities and programs which we have strengthened through this and previous legislation.

Our support of CMHC's as well as for those who provide qualified professional clinical mental health services in them to the elderly and disabled in rural and underserved areas within community mental health centers, is a large step toward recognizing the goals President Kennedy set for us 25 years ago when he first signed the Mental Retardation Facilities and Community Health Centers Construction Act of 1963; namely the enhanced well-being of the individual supported by the family and by the community.

I would ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mental Health Care Amendment Act of 1991".

SEC. 2. COVERAGE OF QUALIFIED MENTAL HEALTH PROFESSIONALS SERVICES.

(a) COVERAGE OF SERVICES.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by Omnibus Budget Reconciliation Act of 1990, is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

(3) by adding at the end of the paragraph the following new subparagraph;

"(Q) qualified mental health professionals services,".

(b) PAYMENT OF BENEFITS.—Section 1833 of such Act (42 U.S.C. 1395), as amended by the Omnibus Budget Reconciliation Act of 1990, is amended—

(1) in subsection (a)(1)—

(A) by redesignating the subparagraph (M) added by section 4155(b)(2) of the Omnibus Budget Reconciliation Act of 1990 as subparagraph (N); and

(B) by inserting after subparagraph (N) (as redesignated by subparagraph (A) of this paragraph) the following new subparagraph: ", (O) with respect to qualified mental health professionals under section 1861(s)(2)(N), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph.".

(2) in subsection (p), by amending the first sentence to read as follows:

"(p) In the case of—

"(1) certified nurse-midwife services,

"(2) qualified psychologists services,

"(3) clinical social worker services; and

"(4) qualified mental health professionals services, for which payment may be made under this part only pursuant to subparagraphs (L), (M), (N), and (Q) of section 1861(s)(2), respectively, payment may only be made under this part for such services on an assignment-related basis.".

(c) OTHER DEFINITIONS.—Section 1861 of such Act (42 U.S.C. 1395x), as amended by subsection (a) of this section, is amended by adding at the end the following new subsection:

"QUALIFIED MENTAL HEALTH PROFESSIONALS SERVICES

"*(ll)*(1) The term 'qualified mental health professionals services' means such services and such services and supplies furnished as an incident to services furnished by a marriage and family therapist (as defined in paragraph (2)), a psychiatric nurse (as defined in paragraph (3)), or a clinical mental health counselor (as defined in paragraph (4)), on-site at a community mental health center (as defined in subsection (ff)(3)), and such services that are necessarily furnished off-site (other than at an off-site office of such therapist, nurse, or counselor) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual, which the marriage and family therapist, psychiatric nurse, or clinical mental health counselor is legally authorized to perform under State law (or the regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's services.

"(2) The term "marriage and family therapist" means an individual who—

"(A) possesses a minimum of a masters degree in a field related to marriage and family therapy,

"(B) after obtaining such degree has performed at least 2 years of supervised clinical experience in the field of marriage and family therapy; and

"(C)(i) is licensed or certified by the State in which such services are performed as a marriage and family therapist, marriage, family and child counselor, or is licensed under a similar professional title; or

"(ii) in the case of an individual in a State which does not provide for licensing or certification, is eligible for clinical membership in a national professional association that recognizes credentials for clinical membership for marriage and family therapists (as determined by the Secretary).

"(3) The term 'psychiatric nurse' means an individual who—

"(A) is licensed to practice professional nursing by the State in which such individual practices nursing,

"(B) performs such psychiatric nursing services as are authorized under the law of the State in which such individual practices psychiatric nursing; and

"(C)(i) possesses a minimum of a masters degree in nursing with a specialization in psychiatric and mental health nursing or a related field; or

"(ii) possesses a minimum of masters degree in a related field from an accredited educational institution and is certified as a psychiatric nurse by a duly recognized national professional nurse organization, as determined by the Secretary, or is eligible to receive such certification.

"(4) The term 'clinical mental health counselor' means an individual who—

"(A) possesses a minimum of a masters degree in mental health counseling or in a related mental health field (as defined by the Secretary).

"(B) after obtaining the degree described in subparagraph (A), has performed at least 2 years of supervised clinical mental health experience in the field of mental health counseling; and

"(C)(i) is licensed or certified by the State in which the services are performed as a clinical mental health counselor or is licensed under a similar professional title in the State; or

"(ii) in the case of an individual in a State which does not provide for licensing or certification for the title of clinical mental health counselor or a similar professional title, meets the standards established by a national organization that specifically certifies clinical mental health counselors (as defined and determined by the Secretary).".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to services performed on or after the date that is 6 months after the date of the enactment of this Act.•

By Mr. MOYNIHAN:

S. 1103. A bill for the relief of the estate of Dr. Beatrice Braude; to the Committee on the Judiciary.

RELIEF OF THE ESTATE OF DR. BEATRICE BRAUDE

• Mr. MOYNIHAN. Mr. President, I rise today to introduce a private relief bill for the estate of Dr. Beatrice Braude. Dr. Braude was dismissed from her employment at the U.S. Information Agency in 1953 and was subsequently unable to work for the Federal Government until 1982 when she obtained a part-time position with the CIA's language school. Dr. Braude spent years fighting her McCarthy-era dismissal as a security risk until her death on October 16, 1988. This bill takes no position on the merit of her estate's claim but would allow her estate to obtain a judicial hearing on the matter.

At the time of her dismissal, Dr. Braude was told that it was a result of budget cuts. After enactment of the Privacy Act of 1974, she obtained her

personnel files and discovered that she was considered a security threat and was fired on the grounds of this unfounded suspicion. I would point out here that Dr. Braude had worked for the State Department as a Foreign Service staff officer and had been stationed at the American Embassy in Paris before going to work at the USIA. Imagine her surprise at being told she would receive a raise and promotion and then being fired only a day later.

When she discovered the real reason for her dismissal, in 1976, she filed suit with the U.S. Court of Claims to clear her name and obtain reinstatement and damages. A divided Court of Claims dismissed her suit as untimely under a 6-year statute of limitations. This bill would waive the statute of limitations and allow her estate to have a hearing on the merits of her claims.

I introduced similar legislation in the 100th and 101st Congresses. Since then, sadly, Dr. Braude has died leaving her name still tainted by false accusations and slander. In brief, this bill merely grants Dr. Braude's estate a day in court to attempt to clear her name.

Dr. Braude's case is not new to the Senate. In 1979, Senator Javits and I introduced a similar bill which the Senate passed by voice vote. Unfortunately, the House of Representatives did not take action on this bill before the end of the 96th Congress.

Adoption of this bill will finally permit a citizen's name—one who devoted much of her life to Government service—the full protections of the law.

I ask that Dr. Braude's obituary be printed in the RECORD following these remarks. I also ask that the full text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT TO SUIT.

Nothwithstanding any statute of limitations, lapse of time, or bar of laches, the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for back pay by the estate of Dr. Beatrice Braude against the United States arising out of the termination of Dr. Braude's employment at the United States Information Agency on December 30, 1953.

SEC. 2. RESTRICTIONS UPON SUIT.

Suit upon any such claim may be instituted at any time within 1 year after the date of encatment of this Act. Nothing in this Act shall be construed as an inference of liability on the part of the United States. Except as otherwise provided in this Act, proceedings for the determination of such claims, and review and payment of any judgment or judgments thereupon shall be had in the same manner as in the case of claims over which such court has jurisdicition under section 1491 of title 28, United States Code.

[From the Washington Post, Oct. 21, 1988]

BEATRICE BRAUDE, RETIRED PROFESSOR OF FRENCH, DIES

Beatrice Braude, 75, a retired professor of French at the University of Massachusetts and a former employee of the U.S. Information Agency who spent years fighting her dismissal as a security risk, died of cancer Oct. 16 at the Hewbrew Home of Greater Washington in Rockville.

Miss Braude was fired from her USIA position as an analyst of French newspapers in 1953, shortly after joining the agency. She had previously been assistant cultural affairs director at the U.S. Embassy in Paris and a staff member of the State Department's Office of Research and Intelligence. She began her government service in Washington with the Office of Strategic Services during World War II.

At the time of her dismissal, Miss Braude was told she was being let go because of a reduction in force. Three years later a friend told her that USIA had described her to a prospective employer as a security risk, and a lawyer for the agency confirmed in subsequent legal proceedings that, in fact, she was fired because the agency considered her a security risk.

Miss Braude spent the rest of her life in an unsuccessful battle against that allegation. When she was young she had known another woman convicted of being a Soviet spy, and she was a member of a Washington bookstore that was suspected of being a gathering place for leftists. But a loyalty board and a State Department internal investigation had cleared her of being a security risk.

After the passage of the Privacy Act of 1974, she obtained the records of her federal employment and began legal proceedings to clear her name. The proceedings continued without resolution until her death.

During the 1950s and the 1960s, Miss Braude earned a doctoral degree in French from Columbia University and taught at several institutions of higher learning in New York City.

During the early 1970s, she worked for WGBH-TV in Boston. She later created and produced a radio program, "Tout en Francais," which was broadcast over station WFCR in Amherst, Mass.

She joined the faculty at the University of Massachusetts in 1974. She retired in 1981 and moved back to the Washington area.

Miss Braude was born in New York City and graduated from Hunter College.

Survivors include a brother, Theordore Braude of New York City.●

By Mr. DURENBERGER:

S. 1104. A bill to amend title II of the Social Security Act to provide for a waiver of the 5-month waiting period for disability insurance benefits for certain terminally ill individuals; to the Committee on Finance.

SOCIAL SECURITY RELIEF FOR TERMINALLY ILL INDIVIDUALS

● Mr. DURENBERGER. Mr. President, last summer, a constituent of mine named Dennis came up to me at the State fair who had been battling cancer for some time and who had, that month, been diagnosed as terminally ill with a prognosis of 6 months. Prior to this final diagnosis, he continued to work even though he had a tumor on his spine which had destroyed almost half of a vertebra and had tumors in the liver and lungs. He was taking daily injections of interferon and received chemotherapy treatments. On August 17, when he realized he was no longer able to work, Dennis applied for Social Security disability.

However, Dennis never lived to see his first check. He died January 25, 1991, 1 week before he was eligible for benefits. He is survived by his wife.

You see, Mr. President, under current law, to be eligible for disability worker's benefits, a worker must have achieved insured status; meet the definition of disability; and wait 5 months between the time a claimant is determined entitled to benefits and the time in which benefits begin. Dennis fell 1 week short of this last requirement.

Yet, when I asked the Social Security Administration why this 5-month waiting period was needed, their response was that it has always been that way. When I asked if there was any policy reason for it, they couldn't provide one. So why, Mr. President, do we continue to support a policy that waits for people to die before they become eligible. Because it has always been that way? That is not good enough.

Dennis and his wife are not alone. Over the years, I have seen a number of similar incidents where an individual, diagnosed terminally ill, died before they became eligible for social security due to the 5-month waiting period. Another woman recently called my office crying, afraid that she would die before she was able to pay for her medical bills and be forced to leave her family with debts she had built up due to her illness. She, too, died 1 month before she became eligible. Another man with cancer contacted me seeking assistance; he died 3 weeks before eligibility.

These are just a few tragic cases that have crossed my desk recently. But Mr. President, there are many people who have been diagnosed terminally ill, unable to work who have to spend their final days waiting and worrying if they will be able to make tomorrow's payments and what debt they will leave to loved ones left behind.

Mr. President, this 5-month waiting period is simply unrealistic for claimants who are terminally ill. So I am introducing legislation today that will eliminate the 5-month waiting period for individuals diagnosed terminally ill by a licensed physician and whose impairment is expected to result in the individual's death within a 12-month period. If this bill will make a small dent in easing the fear and hardship terminally ill people and their families experience during their wait for benefits, then I believe it is the least we can do.

Mr. President, I urge your support, and ask unanimous consent that the full text of the bill be printed in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF 5-MONTH WAITING PERIOD FOR CERTAIN TERMINALLY ILL INDIVIDUALS.

(a) IN GENERAL.—Section 223(c)(2) of the Social Security Act (42 U.S.C. 443(c)(2)) is amended—

(1) by striking "(2) The term" and inserting "(2)(A) Except as provided in subparagraph (B), the term",

(2) by striking "(A)" and inserting "(i)",

(3) by striking "(B)(i)" and inserting "(ii)(I)",

(4) by striking "(ii) and inserting "(II)",

(5) by striking "paragraph" in the second sentence thereof and inserting "subparagraph", and

(6) by adding at the end thereof the following new subparagraph:

"(B)(i) In the case of any application for disability insurance benefits filed by an individual who—

"(I) is determined to be under a disability; and

"(II) who has been certified as terminally ill by a licensed practicing physician, subparagraph (A) shall be applied by substituting 'the earliest 30 consecutive day period' for 'the earliest period of five consecutive calendar months'.

"(ii) For the purposes of this subparagraph, an individual is considered to be 'terminally ill' if the individual has a medical prognosis that the individual's life expectancy is 12 months or less.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for disability insurance benefits made on or after the date of the enactment of this Act.●

By Mr. BENTSEN:

S. 1105. A bill to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; to the Committee on Energy and Natural Resources.

BIG THICKET NATIONAL PRESERVE ADDITION ACT

● Mr. BENTSEN. Mr. President, today I introduce a bill that will initiate the attainment of a long-time goal of preserving a significant portion of a dynamic part of our country—the Big Thicket of east Texas. This area represents a biological crossroad of North America because of its 10 distinct plant communities. This bill adds areas to the Big Thicket Preserve needed to protect the diversity of not only a beautiful area but an ecologically important part of our country's landscape.

As a newly elected Senator in 1971, one of the first bills I introduced was legislation to set aside 100,000 acres to establish the Big Thicket National Preserve. We had to settle for less in order to get the preserve established and today this ecologically unique preserve encompasses 86,000 acres. This legislation will add another 15,000 acres to the preserve thus achieving more than my original goal. This is identical to legislation which has been introduced in the House by my distinguished colleague from Texas, Congressman CHARLES WILSON.

The Big Thicket is an area so varied that it contains both flood plains and sand hills, swamps and bogs, forests, and savannahs. An astonishing variety of plants and animals flourish in the preserve. There are over 300 kinds of birds found in the areas as well as 40 wild orchid species. There are plants representing the Appalachian mountains, the tropics, and even the desert.

The areas I propose today for inclusion in this unique preserve will add to that rich diversity and help to protect the biological integrity of the existing units. The Village Creek Corridor and Big Sandy Corridor units not only add to scenic beauty and ecological diversity of the preserve, but they will also connect three major preserve units. These corridors units will provide an important migration pathway for plant and animal species, thereby helping to maintain the many species of the area. The Canyonlands unit contains beautiful scenic areas of steep walls, springfed creeks, and rare plants. The Sabine River Blue Elbow unit will add the largest undisturbed acreage of Cypress-Tupelo blackwater swamp in southeast Texas. The preserve currently encompasses less than 100 contiguous acres of this ecotype. An addition to the Lower Neches River Corridor unit provides an undisturbed area of vegetation and wetlands.

Preservation of the Big Thicket has been a bipartisan effort on the part of many Texans over many years, I hope that it will continue to be so. In the last Congress, concerns about acquisition were brought forth by citizens of the area. This legislation responds to those concerns and provides workable methods of acquisiton of lands in the Big Thicket area.

Mr. President, this bill will attain a goal that has been sought for many years so that Americans will be able to enjoy the full measure of this environmental treasure for many more years into the future.●

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. DOLE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 9, a bill to amend the foreign aid policy of the United States toward countries in transition from communism to democracy.

S. 88

At the request of Mr. DURENBERGER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 88, a bill to amend the Internal Revenue Code of 1986 to make permanent the deduction for health insurance costs for self-employed individuals.

S. 139

At the request of Mr. DASCHLE, the names of the Senator from Nevada [Mr. REID], the Senator from Nevada [Mr. BRYAN], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 139, a bill to amend the Internal Revenue Code to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 327

At the request of Mr. BOREN, the names of the Senator from Florida [Mr. MACK], the Senator from Wisconsin [Mr. KOHL], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of S. 327, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 519

At the request of Mr. REID, the names of the Senator from Wisconsin [Mr. KASTEN] and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 519, a bill to amend title II of the Social Security Act to exclude child care earnings from wages and self-employment income under the earnings test with respect to individuals who have attained retirement age.

S. 628

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 628, a bill to direct the Secretary of the Interior to conduct a study of certain historic military forts in the State of New Mexico.

S. 715

At the request of Mr. BURNS, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 715, a bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retain dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

S. 803

At the request of Mr. REID, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 803, a bill to amend the Family Violence Prevention and Services Act to provide grants to States to fund State domestic violence coalitions, and for other purposes.

S. 827

At the request of Mr. SHELBY, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 827, a bill to credit time spent in the Cadet Nurse Corps during World War II as creditable for Federal civil service

retirement purposes for certain annuitants and certain other individuals not covered under Public Law 99-638.

S. 843

At the request of Mr. BREAUX, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 964

At the request of Mr. MCCAIN, the names of the Senator from Indiana [Mr. COATS] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 964, a bill to establish a Social Security Notch Fairness Investigatory Commission.

S. 995

At the request of Mr. GORE, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 995, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for working families by providing a refundable credit in lieu of the deduction for personal exemptions for children and by increasing the earned income credit, and for other purposes.

SENATE JOINT RESOLUTION 49

At the request of Mr. SARBANES, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Joint Resolution 49, a joint resolution to designate 1991 as the Year of Public Health and to recognize the 75th anniversary of the founding of the Johns Hopkins School of Public Health.

SENATE JOINT RESOLUTION 133

At the request of Mr. HOLLINGS, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of Senate Joint Resolution 133, a joint resolution in recognition of the 20th anniversary of the National Cancer Act of 1971 and the over 7 million survivors of cancer alive today because of cancer research.

SENATE JOINT RESOLUTION 147

At the request of Mr. LEAHY, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Joint Resolution 147, a joint resolution designating October 16, 1991, and October 16, 1992, as World Food Day.

AMENDMENTS SUBMITTED

SENATE ELECTION ETHICS ACT

DODD (AND REID) AMENDMENT NO. 246

Mr. DODD (for himself and Mr. REID) proposed an amendment to amendment No. 242 proposed by Mr. BOREN (and others) to the bill (S. 3) to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes; as follows:

At the end of the amendment, add the following new section:

SEC. . UNIFORM HONORARIA AND INCOME LIMITATIONS FOR CONGRESS.

(a) ADMINISTRATION OF RULES AND REGULATIONS.—Section 503 of the Ethics in Government Act of 1978 is amended by—

(1) redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(2) inserting after paragraph (1) the following new paragraph:

"(2) and administered by the committee of the Senate assigned responsibility for administering the reporting requirements of title I with respect to Members, officers, and employees of the Senate;".

(b) DEFINITIONS.—Section 505 of the Ethics in Government Act of 1978 is amended—

(1) in paragraph (1) by inserting "a Senator or" after "means"; and

(2) in paragraph (2) by striking "(A)" and all that follows through "(B)".

(c) AMENDMENTS TO THE ETHICS REFORM ACT OF 1989.—Section 1101(b) of the Ethics Reform Act of 1989 is repealed and section 1101(c) is redesignated as section 1101(b).

(d) FEDERAL ELECTION CAMPAIGN ACT OF 1971.—Section 323 of FECA (2 U.S.C. 441i) is repealed.

(e) SUPPLEMENTAL APPROPRIATIONS ACT, 1983.—Section 908 of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1) is repealed.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1992.

MCCONNELL AMENDMENT NO. 247

Mr. MCCONNELL proposed an amendment to amendment No. 242 proposed by Mr. BOREN (and others) to the bill, S. 3, supra, as follows:

At the end of the amendment add the following:

SEC. . EXPEDITED REVIEW OF CONSTITUTIONAL ISSUES.

(a) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory order or final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of this Act or amendment made by this Act.

(b) ACCEPTANCE AND EXPEDITION.—The Supreme Court shall, if it has not previously ruled on the question addressed in the ruling below, accept jurisdiction over, advance on the docket, and expedite the appeal to the greatest extent possible.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

Mr. BOREN. Mr. President, I ask unanimous consent that the Subcommittee on Immigration and Refugee Affairs, of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Monday, May 20, 1991, at 2 p.m., to hold a hearing on the refugee crisis in the Persian Gulf.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO LEVI AND YVONNE HENRY

• Mr. GRAHAM. I rise today to offer a tribute to veteran newspaper publishers in Fort Lauderdale, Levi and Yvonne Henry of the Westside Gazette.

It is always a challenge to start something new. It is especially tough to start a newspaper. But that is exactly what the Henry's did 20 years ago.

Since then, their circulation has increased sevenfold.

The State of Florida has earned a national reputation for excellence in journalism, and the Westside Gazette is part of that proud tradition.

Mr. President, Mr. and Mrs. Henry are more than successful publishers who toiled to start a newspaper. They are community leaders. They are voices for justice. And, they are investing in the future through the Levi Graham Henry III Scholarship Foundation.

The Henry's interest in education is not new. They feature a "student of the month" in their newspaper.

"The kids remember," says Mr. Henry. "When they tell that, because of you, they went on to make something of themselves, that's just the best."

On this special milestone, we salute the Henry's leadership during the past two decades and wish them the best for the next 20 years.•

CONGRATULATIONS TO PRESIDENT LEE TENG-HUI

• Mr. SYMMS. Mr. President, a year ago last May I had the distinct privilege to attend President Lee Teng-hui's inauguration in Taipei, Taiwan. At the time my colleagues and I also had the opportunity to meet with a number of Taiwan leaders who assured us of their Government's commitment to reducing their trade surplus with us and to accelerating their political democratization.

Now, a year later, as our friends in Taiwan get ready to celebrate President Lee's first anniversary in office, I

wish to say that Taiwan has, indeed, taken major steps in reducing their trade surplus with us. Its trade surplus with us fell from $16 billion in 1987 to last year's $9.1 billion, and it will drop to below $6 billion for 1991. It is conceivable that we may soon enjoy a surplus with Taiwan.

In addition, Taiwan has revised its copyright and patent and trademark laws; also Government and private-sector efforts to protect intellectual property rights have brought Taiwan up to international standards.

Politically, Taiwan's opposition party and other smaller political parties have been increasingly active in Taiwan politics. The recently enacted constitutional reform plan will invite nearly all the mainland legislators to retire from office and will allow local Taiwanese to vie for a majority of the seats in the three parliamentary bodies.

Mr. President, as we look beyond President Lee Teng-hui's first anniversary in office, we can see a Taiwan very much on the move. Taiwan will continue to be a major economic power, with or without assistance. But it is very much in our interests to recognize Taiwan's potential for further growth and to help Taiwan in every way we can.

First, it is my view we should take advantage of Taiwan's full economic potential. For instance, Taiwan's new 6-year national development plan with a total budgeted expenditure of more than $300 billion ought to provide lots of opportunities for United States firms.

Second, we ought to give stronger support to Taiwan's application to join international organizations such as GATT. There is near unanimity in the United States Congress for supporting Taiwan's GATT application. Most recently the New York Times endorsed Taiwan's application in one of its editorials.

Third, Taiwan has improved its unofficial relations with a number of European and Asian nations, and it is in our interests to take the lead in upgrading our exising unofficial relationship with Taiwan. Would it be wonderful if we changed the status of its coordination council to that of liaison office?

Fourth, President Bush had a rewarding time meeting with the Dalai Lama, and I am sure President Bush would have an equally rewarding time if he were to meet with President Lee Teng-hui of the Republic of China. President Lee is a Cornell University Ph.D.

Meanwhile, as I congratulate President Lee and his colleagues, I wish also to send my best wishes to Vice President Li Yuan-zu, Premier Hau Pei-ts'n, Foreign Minister Fredrick Chien, Vice Ministers John Chang and C.J. Chen, and Director Jason Yuan in Taipei, and to Representative Ding Mou-shih in Washington, a premier diplomat and friend.•

HONORING ERIC ANDERSON

• Mr. KASTEN. Mr. President, I rise today to call to the attention of my colleagues the work of a truly distinguished public servant—Eric A. Anderson of Eau Claire, WI.

As city manager of Eau Claire, Mr. Anderson has been a strong advocate for economic development in the Chippewa Valley region. He has been a truly creative and innovative resource for the whole area.

Mr. Anderson developed and implemented a pilot program using private and public support and Community Development Block Grant funds to encourage home ownership among low-income families. He is currently hard at work trying to obtain assistance for employees affected by the Uniroyal-Goodrich plant closing.

Eric Anderson is a dedicated and respected professional, and the whole Eau Claire area is grateful for his efforts.•

ORDERS FOR TUESDAY, MAY 21, 1991

Mr. BOREN. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 a.m., Tuesday, May 21, 1991; that following the prayer, the Journal of the proceedings be deemed approved to date and that the time for the two leaders be reserved for their use later in the day; that when the Senate resumes consideration of S. 3, the McConnell amendment be temporarily set aside and the Senate resume consideration of the Dodd amendment, No. 246; and further that on tomorrow the Senate stand in recess from 12:30 to 2:30 p.m., in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M. TOMORROW

Mr. BOREN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent the Senate stand in recess as under the previous order until 10 a.m., Tuesday, May 21, 1991.

There being no objection, the Senate, at 4:42 p.m., recessed until Tuesday, May 21, 1991, at 10 a.m.

NOMINATIONS

Executive nomination received by the Secretary of the Senate after the recess of the Senate on Friday, May 17, 1991, under authority of the order of the Senate of January 3, 1991:

THE JUDICIARY

WARREN ROGER KING, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS FOR THE TERM OF 15 YEARS, VICE THEODORE R. NEWMAN, JR., RETIRED.

Executive nominations received by the Senate May 20, 1991:

DEPARTMENT OF ENERGY

WILLIAM HAPPER, OF NEW JERSEY, TO BE DIRECTOR OF THE OFFICE OF ENERGY RESEARCH, VICE ROBERT O. HUNTER, JR., RESIGNED.